

Exhibit E

HIGHLY CONFIDENTIAL - J. HRASKA
UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In Re:

Chapter 11

LEHMAN BROTHERS Case No. 08-13555(JMP)
HOLDINGS, INC., et al., (Jointly Administered)

Debtors.

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* * *HIGHLY CONFIDENTIAL* * *

DEPOSITION OF JAMES HRASKA

New York, New York

August 14, 2009

Reported by:

KATHY S. KLEPFER, RMR, RPR, CRR, CLR

JOB NO. 24039

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answer the questions.

On occasion, your counsel will state an objection or, you know, make some kind of objection for the record. That doesn't relieve you of the obligation to answer the question. It's just him trying to either correct a portion of my question or preserve an objection.

In that regard, throughout the day, I am undoubtedly going to misuse a word or some kind of acronym or some technical term that you folks use every day in your line of business which I'm not as familiar with as you are, obviously, so please correct me if I misuse a word or I ask a question that's misleading in any way or you just don't understand the question because I would like to ask a clear question so you can answer it.

Is that okay?

A. That's fine. Thank you.

MR. SHAW: Just before we begin, again, I want to put on the record our understanding that we will designate the entire transcript highly confidential and then we'll go back and redesignate.

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about in the period of September 2008.

A. I was senior vice president from a corporate title perspective and I managed the Secured Financing Operations Group.

Q. And can you just describe for me what that means? What were your responsibilities and duties in that position?

A. The Financing Operations, also known as a financing middle office, is a group that sits between a bunch of groups, but primarily trading and sales individuals and clearance and settlements folks, and we do tasks such as, you know, monitoring positions, reconciling differences, dealing with, you know, customer, you know, concerns, bringing the attention of customers' concerns to either sales staff or trading staff.

We also deal with legal and compliance and regulatory on certain matters. If there are, you know, questions or queries as to the nature of the transactions, if somebody needs some technical expertise on, we usually provide that expertise as to the structure of the transactions and things like that.

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MR. HINE: Yes. That's true. That's fine.

Q. One other thing before we get started, Mr. Hraska. I imagine you're aware that you've been designated as what's called a 30(b)(6) witness by your employer, by Barclays, as to particular topics, and they relate to Schedules A and B which we'll discuss later. So when we get to that portion of the deposition, I'll let you know and we'll treat that portion as a 30(b)(6) deposition, but I'll let you know as we get there.

MR. SHAW: Just so we're, again, clear, Bill, as I think you know, he is one of several witnesses who's been designated as partially responsive to those particular topics.

MR. HINE: I understand.

Q. So, unless you have any questions, we can get started.

A. No, I'm fine.

Q. Okay. Can we just review briefly your employment history with Lehman? What was the last position you held at Lehman? I'm talking

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Q. And who did you report to in that position?

A. At Lehman Brothers at the time, I was reporting to Monty Forrest.

Q. Did you report directly to anyone else?

A. No, under that structure I was a direct report of Monty Forrest.

Q. And who were your direct reports?

A. My direct reports now or at the time?

Q. At the time in September of 2008.

A. Okay, my direct reports in the U.S. were Nancy Denig, D-E-N-I-G, and Paul Lindner.

Q. Prior to this position -- or, let me ask you another question. How long were you in this senior vice president position?

A. Approximately five to six years. I don't remember the exact date, actually. I don't remember the exact date when I got my senior vice presidency.

Q. Okay. How long had you been in the position of managing the secured financing?

A. It began in 2001, but it began in a much smaller scale. I only managed a portion of

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<p>1 HIGHLY CONFIDENTIAL - J. HRASKA</p> <p>2 it and over time it grew into a larger and</p> <p>3 larger responsibility. At the point of</p> <p>4 September, I was managing both equity and fixed</p> <p>5 income. I was managing that globally as well.</p> <p>6 Q. Okay. When did you join Lehman?</p> <p>7 A. August of '93.</p> <p>8 Q. So you held this management position</p> <p>9 since 2001, you said?</p> <p>10 A. That particular one related to</p> <p>11 Financing Operations since 2001, yes.</p> <p>12 Q. What did you do before that at Lehman?</p> <p>13 A. I did a host of different roles, all</p> <p>14 in derivatives-based. I worked in Derivative</p> <p>15 Settlements, I worked in Derivatives Middle</p> <p>16 Office, and I also worked in a Structured</p> <p>17 Products and Reinsurance Middle Office as well.</p> <p>18 Q. Okay:</p> <p>19 A. And over the period of time I also</p> <p>20 held management positions in those roles as</p> <p>21 well.</p> <p>22 Q. When you say middle office, could you</p> <p>23 just tell me what that means?</p> <p>24 A. Middle office is similar to the way I</p> <p>25 described it before for financing, only it was</p>	<p>1 HIGHLY CONFIDENTIAL - J. HRASKA</p> <p>2 for derivative-related products. So same types</p> <p>3 of trader inquiries, sales inquiries, customer</p> <p>4 resolutions to problems, things like that.</p> <p>5 Q. Did there come a point when you left</p> <p>6 Lehman and moved to Barclays?</p> <p>7 A. Yeah, I mean after the -- after the</p> <p>8 declaration of bankruptcy, Barclays extended an</p> <p>9 offer of employment to me, which I accepted.</p> <p>10 Q. Okay. And when did you start working</p> <p>11 for Barclays, do you recall the date?</p> <p>12 A. I don't know, I can't for certain be</p> <p>13 given the official date. When I started, I was</p> <p>14 extended an employment contract, which I signed,</p> <p>15 and I believe I signed that sometime in October,</p> <p>16 but I don't know what the specific date that</p> <p>17 Barclays considers me an official employee</p> <p>18 versus when I stopped my Lehman employment.</p> <p>19 Like I was never out of work for a</p> <p>20 period of time. I mean, I continued to show up</p> <p>21 every day. I'm just not sure what point in time</p> <p>22 they considered me officially a Barclays</p> <p>23 employee.</p> <p>24 Q. I understand. When did you consider</p> <p>25 yourself to be working for Barclays?</p>
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<p>1 HIGHLY CONFIDENTIAL - J. HRASKA</p> <p>2 A. I mean, I guess I considered myself to</p> <p>3 be working for Barclays in the week after the</p> <p>4 declaration of bankruptcy.</p> <p>5 Q. Okay. We're going to be talking about</p> <p>6 these weeks for the whole deposition, so the</p> <p>7 week of September 15 is the week you're</p> <p>8 referring to as the week where they declared</p> <p>9 bankruptcy; is that right?</p> <p>10 A. The week is when -- September 15 is</p> <p>11 when Lehman declared bankruptcy. I wasn't</p> <p>12 completely confident that I was a Barclays</p> <p>13 employee until I guess the week of the 22nd,</p> <p>14 because I was still working, you know, with LBI</p> <p>15 in the U.S. broker-dealer, so I wasn't actually</p> <p>16 sure of my status at that point, to be</p> <p>17 completely honest.</p> <p>18 Q. I understand. Okay. So that</p> <p>19 September 22 was a Monday, correct?</p> <p>20 A. I believe so, yeah.</p> <p>21 Q. Had you had any discussions with folks</p> <p>22 at Barclays prior to September 22 about the</p> <p>23 possibility of you going to work for Barclays?</p> <p>24 A. No.</p> <p>25 Q. When do you recall first speaking to</p>	<p>1 HIGHLY CONFIDENTIAL - J. HRASKA</p> <p>2 anyone at Barclays about you becoming a Barclays</p> <p>3 employee?</p> <p>4 A. I would say it was in that week of the</p> <p>5 22nd.</p> <p>6 Q. Okay. Had you spoken to any folks at</p> <p>7 Lehman prior to September 22 about the</p> <p>8 possibility of you moving over and becoming a</p> <p>9 Barclays employee?</p> <p>10 A. Well, wait. Could I just go back to</p> <p>11 that previous question?</p> <p>12 Q. Sure.</p> <p>13 A. When I spoke on that week of September</p> <p>14 22, like I had never had any employment</p> <p>15 conversations with a legacy Barclays employee.</p> <p>16 All my conversations were with legacy Lehman</p> <p>17 employees, so either my manager, which was Monty</p> <p>18 Forrest, or Alastair Blackwell.</p> <p>19 So like nobody from like Barclays HR</p> <p>20 had approached me or had offered me any</p> <p>21 conversations prior to my conversations with my</p> <p>22 legacy Lehman managers. I don't know if that's</p> <p>23 important or not.</p> <p>24 Q. No, I just want to make sure we're all</p> <p>25 on the same page here.</p>

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So when you say legacy Lehman managers, you're talking about people who were previously employed with Lehman who may now be employed with Barclays?

A. Yes.

Q. Okay. So am I correct to say that, prior to September 22, you had had no conversations with anyone who was -- who had always been a Barclays employee as to your possibility of you going over working for Barclays; is that right?

A. That's correct.

Q. So had you had conversations with legacy Lehman employees or people who were employed with Lehman at the time prior to September 22 about the possibility of you going to work for Barclays?

A. No.

Q. Okay. Do you recall any conversations with Mr. Forrest or anyone in your chain of command about the possibility of you going to work for Barclays?

MR. SHAW: Asked and answered.

A. No.

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A. No. Not direct reports, no.
(Exhibit 136B, a document bearing Bates Nos. BCI-EX-00077317 through 77319, marked for identification, as of this date.)

Q. Mr. Hraska, I apologize, I'm not trying to be intrusive here, but I need to ask you some questions about your compensation.

A. That's fine.

Q. So I'm handing you a copy of Exhibit 136B, which appears to be an agreement between yourself and Barclays dated September 22, 2008, and my question to you is, have you ever seen this document before?

MR. SHAW: Take a minute to look at as much of it as you need to.

A. Yes, I've seen this before.

Q. What is this document?

A. This was the document offering me employment at Barclays.

Q. Okay. And is this your current employment contract with Barclays?

A. It is, yes.

Q. Okay. Did you sign it on September 22?

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Q. Okay. Before I forget, what is your current position at Barclays?

A. I am in a very similar role. Corporate title-wise I'm a director, which is equivalent to SVP. I manage, again, Secured Financing Operations for both equities globally and fixed income in North America.

Q. Is it fair to say your role is -- your duties and responsibilities are relatively the same as you had when you were at Lehman?

A. Responsibilities are reasonably the same, not quite as extensive as they were at Lehman from a global perspective.

Q. Who do you report directly to now?

A. I have a dual reporting line. From a product perspective, I still report to Monty Forrest. And Barclays is structured a little bit different, so from a regional perspective, I report to Alastair Blackwell.

Q. And who are your direct reports?

A. My direct reports now are still Nancy Denig, Paul Lindner, and a gentleman by the name of Henry Duarte, D-U-A-R-T-E.

Q. Okay. Anyone else?

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A. I don't believe so.
No, on October 2, when it's dated.

Q. Okay. Any understanding of why it's dated September 22, but you didn't sign it until October 2?

MR. SHAW: Foundation.

A. I have no idea. I mean, I'm -- I signed it September 22nd because that's when I decided to agree to the terms.

Q. Okay. Was there any negotiations between you and Barclays as to the compensation part of your employment?

A. No.

Q. Okay. How did it take place? Did they just give you a copy of this letter and ask you to sign it?

A. The letter was sent to me via interoffice mail.

Q. Uh-huh.

A. It was preceded by a phone call which said, you know, you're a key employee that we would like to retain, we're going to be sending you a letter for, you know, an offer to join Barclays. We would like you to review it and,

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MR. SHAW: If you know.

A. It was used -- it was to be used for anybody who would provide us secured financing. In the end, it ended up being the Fed, but --

Q. Did you have any understanding during that weekend that there were discussions between Lehman and the Fed about providing financing?

A. No, not specifically.

Q. Okay. Let's just continue through the week briefly and then we'll come back to different topics.

On the Monday of the 15th, were you involved in any negotiations between Barclays concerning the sale transaction that ultimately took place between Barclays and Lehman?

A. No.

Q. Were you asked to provide any information to those who were involved in those negotiations?

A. No.

Q. Were you involved in negotiations with the Fed about the Fed financing that was provided during that week?

A. No.

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Q. Were you asked to provide information in support of that financing?

A. No.

Q. Okay. What did you do ultimately on that Monday, if you recall?

A. A year ago?

Q. Well, it's a big day. It's an eventful day in Lehman's history, correct?

A. It is.

Q. What do you recall doing the Monday when Lehman Holdings filed for bankruptcy?

A. Well, I mean, I guess the first thing to do was, you know, talk to my manager and ask him, you know, kind of what our next steps were. Do we carry on as normal, do we do something different, or do we wait for further instructions or, you know, basically what do we do.

Q. Okay.

A. He advised me that we were going to carry on as normal. We were, at the time, we were still trying to preserve the liquidity and functioning of the broker-dealer, and as far as financing transactions, just to clarify, you

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know, our involvement was to find collateral and those -- that financing by the Fed that you referred to was -- those programs are open to every broker-dealer, and every broker-dealer at the time -- the market was in a very, you know, as you know, very turbulent situation -- every broker-dealer was taking advantage of those programs so it was normal course for us to figure out what assets we could finance with the Fed that potentially wouldn't be financeable with other counterparties.

And that was our focus that week, was to try to locate all the collateral that we had available to finance that the Fed would deem acceptable in their programs.

Q. Okay. And so were you involved in the selection of the securities that were ultimately pledged to the Fed?

A. I wasn't involved in the selection of what was pledged to the Fed. I was involved in identifying assets which were not encumbered and could be used as collateral to be pledged to the Fed.

Q. Okay. And who actually selects which

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collateral was pledged to the Fed?

A. The Fed programs are, at least the ones we used for financing, were tri-party transactions.

Q. Right.

A. And the actual selection criteria itself was done by the tri-party agent.

Q. Who was that?

A. JPChase. JPMorgan.

Q. And can you describe for me your role, if any, in supporting the financing that was provided by the Fed?

A. My role was to communicate between the -- between the trading desks and the tri-party operations groups and just coordinate, you know, the availability of collateral and the booking of the transactions which would ultimately represent that financing.

Q. Okay.

A. So the trading desk basically books the transaction onto a system. My group's role is to ensure that that booking makes it all the way through the front-end booking system all the way through to the system that is the books and

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2 records and what transmits that transaction to
3 our tri-party agent and that there's no
4 discrepancies, everything matches with what the
5 traders know to have raised from a financing
6 perspective.

7 And then we coordinate with the
8 tri-party operations folks to make sure that
9 there were no mechanical difficulties in the
10 allocation that's performed by the tri-party
11 agent, that there wasn't any shortfalls of
12 collateral and things of that nature, and then
13 report back to the trading desk.

14 Q. Do you have any involvement in how
15 that collateral is valued?

16 A. No.

17 Q. Who does that?

18 A. The tri-party agent.

19 Q. And that would be Chase?

20 A. JPChase, yes.

21 Q. Does Lehman --

22 A. Going forward, should we just refer to
23 it as Chase? Because I'm not sure JPMorgan
24 Chase, JPChase.

25 Q. That's fine. We'll use Chase as a

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2 shorthand.

3 A. That's fine.

4 Q. So, to your knowledge, with respect to
5 that Fed financing of the week of September 15,
6 Chase placed a value on the collateral that was
7 used?

8 A. That's correct.

9 Q. Did Lehman place its own value on that
10 collateral?

11 MR. SHAW: Objection. Vague.

12 A. I don't know that -- Lehman, as a
13 normal broker-dealer would have their own marks
14 for collateral on their books and records.

15 Q. Right.

16 A. The final determinant of that
17 collateral with respect to the financing
18 transaction would be the responsibility of the
19 tri-party agent.

20 Q. Okay. And do you know if there's
21 any -- were there any differences in the
22 valuations that Lehman would -- placed on that
23 collateral versus what Chase placed on that
24 collateral during that week?

25 A. I don't know.

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2 Q. Okay. Would you be involved in that
3 normally?

4 A. No.

5 Q. Okay. Before we go further on in that
6 week, do you have any understanding of the
7 actual sale transaction, the terms of the sale
8 transaction between Lehman and Barclays?

9 A. No, I don't.

10 Q. Did you ever have a chance to look at
11 what's known as the Asset Purchase Agreement?

12 A. No, I didn't.

13 Q. Did you ever have any understanding
14 about the terms of the transaction whereby
15 Lehman assets were going to be transferred to
16 Chase -- I mean to Barclays?

17 MR. SHAW: Objection to form.

18 A. At what point in time are you
19 referring to?

20 Q. Okay. Let's break it down. Early in
21 the week, Monday, Tuesday?

22 A. Of the week of the 15th?

23 Q. Of the week of the 15th.

24 Did you have any understanding of the
25 terms of the deal between Lehman and Barclays?

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2 A. I did not.

3 Q. Did you have any understanding that
4 the Asset Purchase Agreement called for the sale
5 of \$70 billion in long positions to Barclays?

6 A. I did not.

7 Q. Had you ever heard that phrase used?

8 A. No. That number is a completely new
9 number to anything I've had heard.

10 Q. You never heard that number during
11 that week?

12 A. During -- to this day.

13 Q. Okay. I'm just trying to get a sense
14 of what you were involved in.

15 A. That's fine.

16 Q. Had you ever heard during that week
17 that the transaction involved the transfer of
18 \$69 billion in short positions to Barclays?

19 A. No.

20 Q. Okay. Going further on in the week,
21 did there come a time when you learned some of
22 the terms of the transaction between Lehman and
23 Barclays?

24 A. During that week, no.

25 Q. After moving to Barclays, have you

1 **HIGHLY CONFIDENTIAL - J. HRASKA**
2 **learned some of the terms of the transaction**
3 **between Lehman and Barclays?**

4 A. At a much later time, yes.

5 **Q. What have you learned about it?**

6 A. I learned that Barclays has purchased
7 the unencumbered assets -- the way I understand
8 it is they purchased the unencumbered assets of
9 Lehman Brothers' clearance boxes.

10 **Q. Anything else that Barclays purchased?**

11 A. The building at 745.

12 **Q. Anything else?**

13 A. No.

14 **Q. When you say "unencumbered assets,"**
15 **what do you mean by that?**

16 A. An unencumbered asset, from my
17 perspective, as an operations professional, is
18 an asset which does not have a lien on it by any
19 other party, primarily customers.

20 **Q. And when you say "in the clearance**
21 **boxes," what are you referring to?**

22 A. Clearance boxes are -- it's a loose
23 term that can be defined in two ways: A
24 clearance box can be a location at a depository
25 institution, such as DTC, or it can be a

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2 clearance or -- a location at a clearing bank,
3 such as a JPChase or Bank of New York, or it can
4 refer to the record of your having those
5 accounts on your stock records. So basically
6 your stock record represents your position of
7 those locations at those outside agents. So
8 it's used intermittently, depending upon the use
9 or the person using it.

10 **Q. And what is your understanding of the**
11 **amount or the value of the assets that were**
12 **transferred from Lehman to Barclays?**

13 MR. SHAW: Objection. Just for
14 clarification, do you mean as unencumbered
15 assets or overall?

16 MR. HINE: Whatever assets he thinks.

17 **Q. Let me clarify that. Let's take out**
18 **the real estate.**

19 A. Okay.

20 **Q. What is your understanding of the**
21 **value of the assets other than the real estate**
22 **that were transferred from Lehman to Barclays?**

23 A. At what point in time?

24 **Q. Now.**

25 A. As of today?

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2 **Q. Yes.**

3 A. As of today, my understanding is that
4 the value of unencumbered collateral that was
5 transferred was approximately 1.4 billion.

6 **Q. Have you heard the term "Schedule B"?**

7 A. I have, yes.

8 **Q. And what is your understanding of what**
9 **that is?**

10 A. Schedule B, to my understanding, is
11 the schedule of assets which were part of the
12 transaction between Barclays and Lehman
13 Brothers.

14 **Q. And is the 1.4 billion that you just**
15 **mentioned, is that the approximate amount of the**
16 **assets on Schedule B?**

17 A. The 1.4 -- the short answer is I don't
18 know.

19 **Q. Okay.**

20 A. You had asked me what had been
21 transferred to date. So what had been
22 transferred is approximately 1.4.

23 **Q. Okay. Are you drawing a distinction**
24 **between transferred and some other -- other --**

25 A. Originally, yes, because you

1 **HIGHLY CONFIDENTIAL - J. HRASKA**
2 originally asked what had been transferred.

3 **Q. Right.**

4 A. And based on, you know, transactions,
5 1.4 or so billion had been transferred.

6 **Q. Right.**

7 A. There may have been a different total
8 value on Schedule B. I can't be certain what
9 that value is. There's been people who have
10 talked about a number.

11 **Q. Okay.**

12 A. So I have a general sense, but I
13 wouldn't testify that I knew a hundred percent
14 what that value of Schedule B was.

15 **Q. Do you have any knowledge of what has**
16 **been called Schedule A with respect to that**
17 **transaction?**

18 A. Schedule A, as I understood it, was
19 related to a transaction prior to that
20 transaction which was the financing between
21 Lehman Brothers and Barclays.

22 **Q. Okay. And do you have any --**

23 A. I'm not sure, is it all part of the
24 same transaction? I don't know that it's part.
25 I view those as distinctly different

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2 transactions, Schedule A and what became
3 Schedule B, but...

4 Q. Okay. Well, I just want to understand
5 what your understanding is.

6 A. Okay.

7 Q. So let me just try to understand. You
8 mentioned a separate transaction between
9 Barclays and Lehman that eventually led to a
10 collection of securities that has been known as
11 Schedule A; is that right?

12 A. That's correct.

13 Q. Okay. And what was the transaction
14 that you understood took place that led to
15 Schedule A?

16 A. There was a secured financing
17 transaction, a repo transaction -- from Lehman's
18 perspective, it was a repo transaction with
19 Barclays which took place on the 18th of
20 September, and the assets related to that
21 transaction became Schedule A.

22 Q. Okay. And is it all right -- was that
23 a tri-party repo?

24 A. That transaction was a -- was a repo.
25 There were -- it was sort of a unique

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2 transaction. It was one that took on elements
3 of tri-party as well as a bilateral contract,
4 but it was governed under the documents of a
5 tri-party repo, yes.

6 Q. And who is the agent with respect to
7 that transaction?

8 A. There was -- well, that's what made it
9 unique. There were two tri-party agents
10 involved. There was Chase, who was a tri-party
11 agent, who held our collateral with the Fed that
12 we had pledged to the Federal Reserve, and then,
13 in effecting the transaction, according to the
14 tri-party terms, there was Bank of New York, who
15 was the agent for Barclays.

16 Q. I see reference in some of the
17 documents to the BONY tri-party?

18 A. Uh-huh.

19 Q. Is that the tri-party we're -- is that
20 the transaction we're talking about?

21 A. Yes, that's correct. We moved the
22 assets from JPChase, who was our tri-party
23 agent, to Bank of New York, who was, as I
24 mentioned, Barclays' agent.

25 Q. Just so I understand the sequence,

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2 tell me if I'm wrong here. There was a
3 financing with the Fed in which there was a
4 certain amount of collateral posted by Lehman,
5 correct?

6 A. That's correct.

7 Q. At some point in time, that collateral
8 gets transferred to Chase? Withdrawn. Let me
9 start again.

10 At some point in time that collateral
11 gets transferred to Bank of New York in
12 connection with this transaction you have just
13 described?

14 A. That's correct.

15 Q. Okay. And were you involved in that
16 transfer of collateral from the Fed program to
17 Bank of New York?

18 A. I was, yes.

19 Q. You were, okay. And did all the
20 collateral make it from the Fed program to the
21 Bank of New York?

22 A. It did not.

23 Q. And do you know -- do you recall how
24 much made it and how much didn't?

25 A. I can't give you the figure of exactly

1 HIGHLY CONFIDENTIAL - J. HRASKA
2 how much that was in the Fed program made it to
3 Barclays of the original collateral because
4 there were difficulties in the collateral all
5 moving over to Barclays.

6 I can tell you how much collateral,
7 approximately, made it to Barclays, but it
8 wouldn't necessarily be all of the same
9 collateral that was with the Fed.

10 Q. Okay. Did you mean to say Bank of New
11 York or Barclays?

12 A. Well, it was to Barclays -- I'm sorry,
13 to the Bank of New York for the benefit of
14 Barclays.

15 Q. Okay. So how much made it to the Bank
16 of New York in connection with that transfer
17 from the Fed program?

18 A. On the night of the 18th,
19 approximately \$42 billion worth of collateral.

20 Q. And that figure is based on a
21 valuation of the collateral provided by who?

22 A. By Bank of New York.

23 Q. So \$42 billion is how Bank of New York
24 valued the amount of money -- the amount of
25 collateral that was transferred from the Fed

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2 **program to it on the 18th?**

3 A. From the Fed -- that was the way that
4 they valued the collateral that was transferred
5 to them, not necessarily just from the Fed,
6 because as I mentioned earlier, not all from the
7 Fed program, because there was collateral which
8 was not part of the Fed program which was
9 transferred to Barclays as well.

10 **Q. Okay. Can you explain to me**
11 **generally -- I think I understand what you said,**
12 **but where did the rest of the collateral come**
13 **from that made it to Bank of New York?**

14 A. It was other unencumbered collateral
15 in Lehman's clearance boxes.

16 **Q. Okay. Are you referring to what I've**
17 **seen referred to as an O74 box?**

18 A. It was -- that was one of the sources
19 of collateral, yes.

20 **Q. Where else did it come from?**

21 A. It came from another DTC location,
22 which was 636, and it also came from our
23 government clearance location. Chase was also a
24 government clearance custodian, so from our
25 government clearance box.

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2 to Barclays.

3 **Q. Okay. Did you have any role in**
4 **preparing what has been called Schedule A with**
5 **respect to that collateral?**

6 A. I did not prepare Schedule A. What
7 I -- what I did provide is I provided
8 information which reflected the assets that
9 Lehman knew to have transferred to Barclays in
10 respect to that transaction, or to Bank of New
11 York for the benefit of Barclays.

12 **Q. Okay. Well, from September 18 through**
13 **that weekend, I think I've seen in some**
14 **documents some efforts to find additional assets**
15 **that were eventually going to be transferred to**
16 **Barclays; is that correct?**

17 A. That is correct.

18 **Q. And were you involved in that effort**
19 **to locate additional assets that were going to**
20 **be transferred to Barclays?**

21 A. I was, yes.

22 **Q. What did you do in connection with**
23 **that?**

24 A. I pretty much performed the same role.
25 I looked across the stock record for assets that

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2 **Q. Does that have a number?**

3 A. It does, but it has an acronym number
4 that I'm not familiar with off the top of my
5 head.

6 **Q. Okay. So were you involved -- let me**
7 **just -- I want to get a sense of your**
8 **involvement now. You were involved in the**
9 **transfer of collateral from the Fed program to**
10 **Bank of New York, and were you then involved in**
11 **the efforts to unwind that September 18 repo**
12 **arrangement?**

13 A. Unwind from the perspective of a deal
14 negotiation or unwind from the perspective of
15 the mechanics of --

16 **Q. I'm trying to get a sense of what your**
17 **involvement was. What did you do, after the**
18 **collateral made it to Bank of New York, what was**
19 **your role in connection with getting that**
20 **collateral eventually to Barclays?**

21 A. We didn't have any more involvement
22 with getting that collateral to Barclays. Once
23 Bank of New York took possession of it --

24 **Q. Uh-huh.**

25 A. -- Bank of New York got the collateral

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2 didn't have liens on them by customers,
3 primarily.

4 **Q. Okay. How many assets were located in**
5 **that effort?**

6 A. I don't know a specific number. I
7 know there were -- there were significant number
8 of individual securities which were located.

9 **Q. Okay. Was that securities that came**
10 **out of the O74 box and 636 box?**

11 A. Those were securities that, yes, out
12 of O74 and 636, yes.

13 **Q. Previously you had said there were \$42**
14 **billion transferred to Bank of New York. Did**
15 **that include assets from the O74 and 636 box?**

16 A. On the night of the 18th?

17 **Q. Yes.**

18 A. Yes, those assets were sourced from
19 those two boxes as well, yes.

20 **Q. Okay. And then were there -- is it**
21 **correct to say there were additional assets**
22 **found over the weekend in those two boxes that**
23 **were also later sent to Barclays?**

24 A. At a later date, yes, there were
25 assets from those two boxes that were sent.

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Q. So when you add up all these assets that were eventually made their way to Barclays, do you have a number that would reflect the value of those assets?

A. I don't know what the value of those assets are today. I know that there was a value assigned to the assets on the night of the 18th for what made it, which were -- what was \$42 billion. My approximate evaluation of what was subsequently transferred was about 1.4 billion of physically moving from Lehman to Barclays.

So those are the two figures that I'm reasonably comfortable with. And the market valuation of those things has been changing over time, being that it's a year later and things like that.

Q. I just want to get a -- just so I understand your perspective on this, from your perspective, there was \$42 billion moved to Bank of New York which eventually makes its way to Barclays, correct?

A. That's correct.

Q. And there's a separate amount of 1.4 billion which is gathered sometime late in the

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week and that eventually makes it to Barclays as well, correct?

A. That's correct.

Q. And is the 1.4 billion what's called Schedule B?

A. The 1.4 --

MR. SHAW: Objection. Asked and answered. Mischaracterizes prior testimony.

MR. HINE: I didn't say anything about his prior testimony.

Q. I'm just trying to figure out, do you consider the 1.4 billion the assets that are on Schedule B?

A. I have subsequently learned that the 1.4 billion are assets that are on Schedule B, yes.

Q. And were you involved in preparing Schedule B?

A. I was not involved in preparing the official Schedule B. I provided assets which were used as the securities that would be later selected and placed on Schedule B, but I didn't prepare the official Schedule B.

Q. Who selected the assets ultimately

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that would become part of Schedule B?

A. I provided that information through my manager at the time. I don't recall whether I had sent it to Monty or to Alastair, but nonetheless, they forwarded it to Paolo Tonucci and I believe Paolo sort of crystallized the official Schedule B.

Q. Is it fair to say over that weekend your role was to just find unencumbered assets that they could possibly decide what to do with?

A. That's correct.

Q. Okay. Did you have an understanding of why you were doing that?

A. No.

Q. Did anyone tell you that there was any kind of shortfalls in what Barclays was expecting to receive at the end of that week?

A. My understanding at the time was that I was still trying to complete the repo transaction, and part of that repo transaction was we had placed cash as well as an asset to Barclays, and, you know, my understanding at the time was that I was looking to, in addition to -- I was looking for assets that would be

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able to be sent to Barclays for the purposes of also substituting that cash.

Q. When you say the repo transaction, are you talking about the September 18 transaction that we previously discussed?

A. Involving the Federal Reserve, yes.

Q. I think I just misunderstood you. The September 18 transaction was between Barclays, Lehman and BONY, right?

A. It was Barclays, Lehman and BONY, but it was -- well, yes, it was Lehman. It was basically like I guess a transaction where I guess the collateral that Lehman had on finance with the Fed was being -- instead now being financed with Barclays and Barclays was then I guess going to finance that transaction with the Fed. So that's why I referenced the Fed.

Q. Okay. When you said you were concerned with the repo at that time, what were you doing with respect to the repo? Again, I'm talking Friday of that week.

A. Friday of that week, I -- it was my understanding that we were looking to substitute the cash that we had placed on deposit for the

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benefit of Barclays with assets as opposed to leaving cash, because it's not efficient from a lending transaction to collateralize a cash loan with cash. So we were looking to find available assets which were suitable under the repo agreement to substitute.

Q. How much cash are we talking about?

A. On the night of the 18th, Lehman Brothers placed \$7 billion on deposit for the benefit of Barclays.

Q. Just so I understand it, in layman's terms -- well, before I ask that, let me -- was that cash part of the \$42 billion that you mentioned?

A. It was not. 42 billion was the value of the assets, physical securities, that had made it to Bank of New York for the benefit of Barclays.

Q. And so there was \$7 billion in cash on top of that?

A. Yes.

Q. And so am I correct to say you were trying to locate other assets that could be transferred to Barclays so Lehman could keep the

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cash portion?

A. So, yes, Lehman could get a return of the cash in lieu of assets. So a substitution of one asset for another.

Q. And were you able to come up with any assets to do that?

A. Yes, I was. On Friday.

Q. How much?

A. Approximately a billion, just a little over a billion. Something like a billion-34, -35, something along those lines.

Q. Okay. And did those assets in fact get substituted in and make their way to Barclays?

A. Well, they made their way into Barclays. My expectation of a return of the cash never occurred.

Q. Why is that?

A. Well, with the mechanics and everything that happened with the relationship with Chase that day, Chase didn't return any of the cash at that point.

Q. Can you explain to me the problems you had with the relationship with Chase that day?

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A. The morning of the 19th, Chase had effectively shut down our clearing accounts and stopped having communication with anything other than I think some very senior folks in Lehman Brothers.

Q. And why did they do that?

MR. SHAW: Objection. Foundation.

A. I don't know particularly why they do that. I mean, there was, you know, there was some speculation as to why they did that because of the status of our situation from a credit perspective and things like that, but I don't know if there was a particular trigger that caused them to do that.

Q. Did you have any conversation with folks at Chase about this?

A. On the morning of the 19th, no.

Q. At any time?

A. I mean, I had conversations with folks at Chase all through the night on the 18th, actually, technically, I guess into the morning of the 19th while we were trying to finalize the transaction. And after the morning of the 19th, I guess the very early morning, like in the 1, 2

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o'clock range, that was the last conversation I had with anybody at Chase.

Q. What was that about?

A. That was primarily about -- The last conversation or the last series of conversations?

Q. Last series of conversations?

A. The last series of conversations were in relation to securing a loan to create the \$7 billion which we placed on deposit with Barclays.

Q. I see something referred to in the documents as a box loan. Is that the loan you're talking about?

A. The 7 billion was a box loan, yeah. Lehman took a box loan from Chase and let -- as a result, Chase puts a lien on the assets for that \$7 billion in cash, yes.

Q. What assets was that lien on?

A. There were assets which were unencumbered assets sitting in Lehman's clearance boxes at Chase.

Q. Is that an identifiable set of assets that now has a lien on them from Chase?

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MR. SHAW: When you say "now," you mean as we sit here?

Q. As a result of that box loan, is there now a lien on a particular set of assets, identifiable set of assets in Lehman's box?

MR. SHAW: Objection to form.

A. Chase, in extending the loan to us, selected the assets that they thought suitable for collateralization on that loan.

Q. Did Lehman have any say in the selection of those assets?

A. No.

Q. Let me go back. I think I have a general sense of what you were working on at the time. I just want to go back with a couple of particular questions.

I wanted to go back to the Fed financing for a minute. Do you know what the repo rate was for that financing?

A. I don't know.

Q. What is a repo rate?

A. A repo rate is the rate of interest that you pay for the extension of the cash loan.

Q. Have you ever seen any schedules of

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repo rates with respect to the Fed financing?

A. Schedules of rates, no.

Q. So you don't -- I think you just said you don't know the repo rate for that Fed financing program?

A. Well, to be clear, there was more than one program.

Q. Right.

A. And I didn't know the rates on any of the programs.

Q. What was the repo rate on the September 18 transaction we've been talking about?

A. I don't recall.

Q. What is a repurchase price with respect to a repo?

MR. SHAW: Objection. Calls for a legal conclusion, but you can answer.

THE WITNESS: Okay.

A. A repurchase price -- a repo transaction is a collateralized loan. It's based on an initial sale of collateral and a repurchase of collateral. The price of that collateral on both, what are called both legs,

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which is the on leg, or start leg, or the off leg, or maturity leg, are the same thing. So the repurchase price would have been the price that was assigned to that collateral on the start of the transaction. There's no difference between the repurchase price and the initial price.

Q. What was the, just -- what was the initial price on the September 18 repo we've been talking about?

A. Well --

MR. SHAW: Objection. Foundation.

A. There were, if you're asking me about prices, prices of securities, there were prices on something along the lines of 10,000 securities. So...

Q. No, I'm asking the aggregate price on the September 18 repo. Am I correct to say that --

A. Well, it --

Q. -- Barclays, through bank of New York on behalf of Barclays, received collateral valued at \$42 billion, correct?

A. Right.

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Q. And they also received \$7 billion in cash pursuant to the box loan, right?

A. That's correct.

Q. What did Barclays give to Lehman?

A. Barclays gave to Lehman \$45 billion of cash.

Q. And is that the price that you were just referring to when you talked about the on --

A. No.

Q. Okay.

A. That's the -- that's what's known as the repo principal or the loan amount.

Q. Okay. And so how is that different from the prices you were just talking about?

A. Prices are the prices of the underlying collateral that securitized that loan.

Q. And how are they different from the principal of the loan?

A. The principal of the loan is the extension of the dollar amount or what the value -- what the value of cash that's being extended is. That's the loan principal.

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Q. Right.

A. The price, the prices, are the prices of the individual collateral that make up that loan, and in order for a loan to be effective, the value of the price times the par amount of the collateral should exceed the principal extended.

Q. Okay. Is that what's known as the haircut, the amount by which it exceeds?

A. The amount by which it would exceed the loan is known as the haircut, that's correct.

Q. And so what was the haircut associated with the September 18 repo?

A. There wasn't a -- there wasn't a specific stated haircut. There was a total loan amount, which was this \$45 billion, and the total collateral value that we were trying to transfer over to Barclays or what we were directed to transfer over to Barclays was approximately \$50 billion.

Q. And that \$50 billion was comprised of the approximately \$42 billion in securities that you mentioned earlier plus the cash?

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A. Well, it was -- it was -- we worked through the night of the 18th. So I guess it was very, very early in the 19th. So it was the morning of the 19th at like maybe 2 o'clock in the morning or something like that.

Q. So, back to the notion of a haircut, the haircut for that transaction is the difference between the approximate \$50 billion in collateral and cash that was transferred to Bank of New York and the 45 billion that Barclays transferred to Lehman, correct?

A. Could you repeat that one more time? I'm sorry.

Q. I'm just trying to figure out what the haircut is for that transaction. I thought you said that approximately 50 billion was transferred to Bank of New York or Barclays?

A. That's correct.

Q. In the form of either collateral or cash?

A. Uh-huh.

Q. And that Barclays gave Lehman 45 billion in cash?

A. Right, that's correct.

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A. It turned out that that was the case. It was initially intended to be all collateral, but the market value of what we were to transfer initially was \$50 billion.

Q. Okay. And Barclays was, after the -- after they received the proceeds of the loan and the collateral, was Barclays satisfied that it had received the entire amount of collateral that it was expecting with respect to that repo?

MR. SHAW: Objection. Foundation.

A. Yeah, I don't know whether they were satisfied or not. I mean, we completed the securities transfers until the point that we couldn't make any transfers because the system had been shut down, and we were requested at that point to deliver an additional 7 billion in cash, which we did.

Q. Okay. When was that transferred, approximately?

A. The 7 billion in cash?

Q. Yes.

A. Somewhere between 2 and 3 o'clock in the morning on the 19th.

Q. Friday?

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Q. So that makes the haircut approximately \$5 billion?

A. That would be correct.

Q. Do you know what the haircut was for the Fed program earlier in that week?

A. I don't. Again, the haircut, each security class had its own individual haircut, so there would have been a, I guess what's called a synthetic haircut, which, you know, would equate to something similar to what you did there, you know, so -- and I believe it was similar because the transaction was described to me as we were going to take the extension of financing that the Fed had offered to Lehman and we were going to help effect the transfer of that to Barclays so that Barclays could then step back into that transaction. So I believe it was similar. I don't know exactly what the haircut was.

Q. Okay. And who described the transaction to you like that?

A. John Rodefald, who was held of North American Operations at the time, had contacted Alastair and myself to talk about the

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2 transaction.

3 Q. And what did he say about it?

4 A. He basically told us that Barclays had
5 been contacted by the Fed and Barclays was asked
6 to provide a credit, a counterparty credit
7 upgrade to the Fed, in essence. They were fine
8 with financing the collateral basket that they
9 were financing, but they would prefer not to
10 have Lehman as a counterparty on the other side
11 of that.

12 They asked Barclays to basically
13 intermediate a transaction where Barclays
14 offered Lehman the same financing that they had
15 been -- that the Fed had been financing with
16 them throughout that week, and then that
17 Barclays would take that collateral and place it
18 back on deposit with the Fed to make them whole
19 on the cash transaction.

20 Q. I think I understand what you just
21 said.

22 What else did Mr. Rodefeld say on that
23 call?

24 A. Well, that call was on the 17th, and
25 they initially were looking to actually effect

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2 of the parties. Purely from the size of the
3 transaction, it was an extremely large
4 transaction, and the number of securities
5 involved were in the multiple thousand range,
6 you know, I would say in the double-digit
7 thousand range. So that was one of the issues.

8 So not just from a transactional
9 perspective, but also from a static perspective
10 on the Bank of New York's side, they didn't have
11 a lot of these securities set up on their
12 systems. It was going to take them time to set
13 the securities up to be able to set up receipts
14 for these securities and things along that
15 nature.

16 Q. So how was it possible to do it on
17 Thursday as opposed to Wednesday?

18 A. People were working 24 hours a day to
19 get it done and bunches of people were brought
20 in to help set things up and there were
21 technologists brought in on all different sides
22 to help do away from ordinary type transactions
23 and things like that to get the securities
24 transferred.

25 Q. So am I correct to say that you

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2 that transaction the same day on the 17th. And
3 then, you know, with some subsequent
4 conversations, it just became -- it basically
5 became an impossibility not just for Lehman
6 Brothers, but for Bank of New York, JPChase,
7 Barclays to do a transaction of that magnitude
8 in the course of a day.

9 So from the 17th through the --
10 basically the whole 17th into the night of the
11 17th and even morning of the early 18th, we
12 discussed the mechanics on how we would effect
13 that transfer in the most efficient manner.

14 Q. So do you recall anything else about
15 what Mr. Rodefeld told you on that call?

16 A. Not other than what I just described
17 to you.

18 Q. So am I correct to say that the
19 initial intent was to have this transaction take
20 place on the Wednesday of that week?

21 A. From the first phone call, yes, it was
22 intended to take place on Wednesday, but...

23 Q. And just why mechanically was that not
24 possible?

25 A. There were numerous reasons from each

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2 learned of the possibility of this transaction
3 sometime on Wednesday, late Wednesday, and then
4 people worked through Wednesday night and then
5 all the way through Thursday night to get it
6 done?

7 A. That's correct.

8 Q. Okay. Did the nature of that transfer
9 change at all? In other words -- let me
10 rephrase that.

11 You just described what Mr. Rodefeld
12 told you about the transaction. Did that
13 transaction change at all over the course of
14 that Wednesday into Thursday?

15 MR. SHAW: Objection. Foundation.

16 A. The nature of the transaction itself,
17 the spirit of the transaction, nothing changed,
18 no.

19 Q. Okay. That makes sense.

20 A. Could I -- I apologize.

21 (Discussion off the record.)

22 (Recess; Time Noted: 10:31 A.M.)

23 (Time Noted: 10:38 A.M.)

24 BY MR. HINE:

25 Q. Mr. Hraska, I just want to take a

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2 **second to just talk again about your**
3 **understanding of the transaction between**
4 **Barclays and Lehman.**

5 **Did you ever have any understanding**
6 **that there was supposed to be a discount**
7 **associated with that transaction?**

8 A. Which transaction? The repo
9 transaction?

10 **Q. No. No, the sale transaction between**
11 **Barclays and Lehman.**

12 A. I didn't have any knowledge as to what
13 the terms of that transaction were.

14 **Q. Did you ever hear the phrase "block**
15 **discount" used in connection with either that**
16 **transaction or the repo that we have been**
17 **talking about?**

18 A. No.

19 **Q. Did you ever have any understanding**
20 **that Barclays was going to be paying less than**
21 **full value for the assets that it was buying**
22 **from Lehman?**

23 A. No.

24 **Q. Did you ever hear any discussion about**
25 **the possibility of defaulting on the repo that**

1 **HIGHLY CONFIDENTIAL - J. HRASKA**
2 **we have been discussing?**

3 A. There was discussions related to that
4 topic on the week of the 22nd.

5 **Q. Tell me what you recall about that,**
6 **those discussions.**

7 A. Well, there was -- it was news that
8 obviously LBI had filed for I guess SIPC
9 protection. So the margin folks had contacted
10 me on the morning of -- I don't know which
11 morning, I believe it was on the 22nd, but if
12 not, on the 23rd, to ask me if that transaction
13 was being considered a default by Barclays. And
14 at the time, I didn't know, but there was -- I
15 then had conversations about whether that was
16 going to be treated as default with my manager,
17 and at the time, you know, we didn't actually
18 know when it was or if it was going to be
19 treated as in default.

20 **Q. When we talk about "it," we're talking**
21 **about the September 18 repo?**

22 A. Repo itself, yes.

23 **Q. And LBI filed for bankruptcy on**
24 **Friday, the 19th?**

25 A. That's my understanding.

1 **HIGHLY CONFIDENTIAL - J. HRASKA**
2 **Q. And so you had conversations the**
3 **following Monday about this?**

4 A. Yes.

5 **Q. And who were the conversations with?**

6 A. I don't recall specifically. Somebody
7 from the Margin Group. I don't recall
8 specifically who it was from the Margin Group
9 that I had a conversation with. And I also had
10 a conversation with Monty Forrest, which is my
11 manager.

12 **Q. The Margin Group at Barclays?**

13 A. The Margin Group at legacy Lehman
14 Brothers.

15 **Q. Do you recall the names of the**
16 **individuals that you spoke to?**

17 A. No, I just said I didn't recall it.

18 **Q. To your understanding, was the**
19 **September 18 repo unwound in some way?**

20 A. To my understanding, it was defaulted
21 and the collateral that was put up to securitize
22 that loan was seized by Bank of New York for the
23 benefit of Barclays.

24 **Q. Okay. And did Bank of New York also**
25 **seize the cash that had been posted?**

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2 MR. SHAW: Objection. Foundation.

3 A. The cash itself was not in an account
4 that or in a position for Bank of New York to
5 seize. The cash itself was being held for the
6 benefit of Barclays at JPChase.

7 **Q. Okay. And what happened to that cash?**

8 MR. SHAW: Foundation.

9 A. Barclays, because the cash was put
10 into the account of their benefit, they -- later
11 I understood, and it would make sense, that they
12 claimed ownership of that cash. What happened
13 to the cash after that, I sort of was removed
14 from the transaction after they laid ownership
15 claim to that cash.

16 **Q. Okay. I guess do you understand that**
17 **there was an ensuing dispute between Chase and**
18 **Barclays as to the ownership of that cash, among**
19 **other things?**

20 A. I did, yes.

21 **Q. And were you involved in that**
22 **resolution of that dispute?**

23 A. My only -- not in the resolution, no.

24 **Q. What was your involvement in**
25 **connection with that dispute?**

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A. To do some fact-finding to describe how that cash --

MR. SHAW: Actually, let me just stop you here. If this was any work you did for counsel, I don't want you to get into the details of it.

THE WITNESS: Okay.

A. It was purely to describe how that cash got there, why was there cash in a repo transaction.

Q. And who were you describing that for?

A. My initial conversation on that was with -- was with the Treasury folks, and that was more so just to -- was more so just to review sort of what happened on that evening and --

Q. When you say "the Treasury folks," are you talking about Mr. Tonucci?

A. Mr. Tonucci and his organization, yeah.

Q. Okay. And so am I understanding you correctly that you explained to them the genesis of the box loan that we just previously discussed and how the cash came to be involved

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in that transaction?

A. Yes.

Q. And did you have any other involvement in the dispute between Barclays and Chase over that cash?

A. No.

Q. Okay. I would like to revisit some of the things we talked about earlier.

There was a pool of collateral that was used to secure the Fed financing early in the week, correct?

A. That's correct.

Q. And I think you told me you weren't aware of the value of that pool; is that right?

A. That's correct.

Q. At some point that pool was supposed to be transferred to Bank of New York for the benefit of Barclays, but not all of it makes it, right?

A. That's correct.

Q. And now do you know why it didn't make it, that portion of it didn't make it?

A. There were multiple reasons why not all the collateral made it.

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Q. Can you tell me what they are?

A. I can tell you the ones that I'm aware of. I may not tell you every reason, but ...

The first reason was that some of the collateral that was pledged to the Bank of New York -- I'm sorry, that was pledged to the Fed was obtained through a program called GCF, which stands for General Collateral Financing.

Q. Uh-huh.

A. As a result of this program, you obtain collateral. It's basically it's a dealer-to-dealer tri-party program. So you obtain collateral, which is credited on a book-entry-only basis to your clearing bank, and that clearing bank -- you can use that collateral to -- you can basically rehypothecate that collateral. You can use it as collateral for an ongoing transaction.

The transference of that collateral is purely governed by the Fixed Income Clearing Corporation, or FICC, in conjunction with the two clearing banks, Bank of New York and JPChase. So when a transaction is agreed and it's put on and when it's unwound, what happens

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is is that the transference of that collateral is purely governed, as I mentioned, by FICC.

And so we had previously purchased collateral under that program and we were using some of that collateral purchased under that program, and when the morning of the 18th hit, some of those programs had matured, and as a result of that maturity, that collateral was taken out of our clearance boxes on an automated fashion away from us having any involvement in or being able to even stop that. Because just as part of the program, collateral comes in and goes out.

So what was previously sourced from that program and listed as a rehypothecated asset to the Fed on the morning of the 18th was no longer available for us to actually transfer to Bank of New York.

Q. And do you know the value of the collateral that was -- falls into that category?

A. I don't know the value of specifically the GCF collateral. I know that there was -- it was a significant value. There was a value of -- GCF collateral is typically Fed-eligible

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2 collateral. We had a discrepancy of
3 approximately 8 billion in Fed-eligible
4 collateral, but I don't know whether that
5 discrepancy -- I can't say for certain whether
6 that discrepancy was purely related to GCF or
7 not.

8 Q. When you say 8 billion, is that the
9 amount that didn't make it from the Fed program
10 to the Bank of New York?

11 A. That was the amount at the time when
12 we tried to effect the transfer of the Cusips
13 that were out there that we were unable to
14 transfer on the 18th.

15 Q. And so am I correct to say there was
16 approximately \$8 billion in collateral that was
17 not able to transfer on the 18th from the Fed
18 program to Bank of New York; is that right?

19 A. Yeah, initially, yes.

20 Q. Okay. And a portion of that 8 billion
21 wasn't able to transfer due to this --

22 A. GCF.

23 Q. -- GCF issue that you just described?

24 A. Yes.

25 Q. Do you know what portion of it falls

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2 into that category?

3 A. I don't, unfortunately.

4 Q. Do you know if it's most of it or only
5 a small portion?

6 A. I don't think it's most of it, but
7 it's somewhere between most and small. It's
8 probably somewhere in midrange. I don't
9 honestly know.

10 Q. I'm not trying to get you --

11 A. It's not insignificant, but I don't
12 think it's most of it.

13 Q. So that leaves another portion of the
14 8 billion that didn't make it. Why did the rest
15 of it not make it?

16 A. All right. So there were other things
17 that were happening on that day. Collateral
18 over securities that were moving were securities
19 that were also traded by our inventory traders,
20 proprietary traders at Lehman. They were also
21 securities that, you know, customers maybe were
22 asking to move out of their accounts and move to
23 other broker-dealers.

24 When all these transactions take
25 place, there are a queue of deliveries that get

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2 built out of the delivery boxes, and when there
3 becomes availability, there's no way without
4 manually intervening in every single delivery to
5 say, okay, wait a minute, this Security A goes
6 to Customer A and Security A goes to Customer B
7 or C.

8 So what was happening, unfortunately,
9 is many of the securities that were going --
10 that had deliveries onward to Bank of New York
11 for the benefit of Barclays also had onward
12 delivery instructions for other people as well.
13 So when the availability -- when the securities
14 became available, some of those securities were
15 first delivered to other onward obligations.

16 Q. Do you know approximately how the
17 amount of securities that fall into that
18 category?

19 A. I don't. I actually have no idea on
20 that because that was -- that was a non-stop
21 request of, you know, customer transfers, new
22 trades and, you know, inventory traders were
23 trying to sell assets to raise cash. So it was
24 just an enormous amount of transactions in a
25 particular time period.

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2 Q. Did those securities, I think I
3 understood what you said, they got used for
4 other purposes, basically, and is that -- does
5 that relate to the winding down of the matched
6 book that was managed by the Finance Department,
7 the Financial Department within Lehman?

8 A. I wouldn't attribute it to a winding
9 down of the matched book. All I can say is that
10 there were -- there were trades booked in the
11 system that were, you know, outward-going
12 deliveries. They could have multiple sources.

13 So, as the securities came in, they
14 just made on those deliveries and they could
15 have multiple reasons why they were pending for
16 delivery.

17 Q. I think you were describing reasons
18 that some of the collateral didn't make it to
19 BONY. Are there any other reasons?

20 A. There is one other reason in my mind
21 that was a reason of the initial -- there was an
22 initial shortfall, right? And that was because
23 we were initially going to do the transfer in
24 increments of \$5 billion, and Barclays had
25 forwarded the first \$5 billion and our tri-party

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agent was then, upon receipt of that \$5 billion, supposed to released \$5 billion worth of collateral that was previously held in the Fed program.

They had sent in a request to Lehman Brothers, "they" being JPChase sent in a request to Lehman Brothers as to which securities -- or did we have a preference as to which securities were released first. The response back was there was no particular order that needs to be released first. However, just release the securities that are in the program.

Unfortunately, there was a miscommunication and JPChase understood that to be any \$5 billion, and it released also some securities that were not in the program.

Q. When you say "the program," you're talking about --

A. "The program," meaning that were being financed by the Fed the previous evening.

Q. And so I interrupted your story, but continue.

A. So, as a result of that release, those securities had some onward obligations as well

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because they were subject to other transactions, as we described earlier, and those securities as well had gone out away from Bank of New York, and as a result of all these different things taking place, the first delivery of collateral only accomplished somewhere in the neighborhood of around probably 2 billion or less.

Q. Can you explain that? I mean Chase thinks they're releasing 5 billion?

A. Uh-huh.

Q. And only 2 billion or less makes it to BONY?

A. Right.

Q. And how does the rest get diverted? Just automatic?

A. Well, per the process we just talked about, those assets get released to our availability, and because there were pending deliveries in our clearance locations at both DTC, 636, O74, the Fed box, when those securities became available, they were immediately delivered on other obligations and they weren't available any more to be delivered to Bank of New York.

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Q. So, just to continue the story, Chase thinks it's delivering 5 billion, but they get diverted to other purposes and only a little less than 2 billion makes it to BONY out of that first delivery?

A. Chase releases their lien on 5 billion, and as a result, yes, Lehman, through it's clearance relationships, only delivered 2 billion. I think it was under 2 billion, but I just don't -- somewhere under 2 billion I think is the figure.

Q. So what happens next?

A. At that point in time we were contacted by John Rodefald, who was representing operations at Barclays. He said we were going to suspend -- we were going to suspend the next increment of \$5 billion in cash being wired because Barclays didn't feel comfortable in wiring another 5 billion when they hadn't fully received the assets on the first 5 billion, and he asked us to hold off until we heard back from him with further instructions.

Q. And did you eventually get further instructions?

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A. We did very late in the day, I would say somewhere in the neighborhood of between 4 and 5 o'clock. He said that it was decided that Barclays was going to extend the remainder of the loan balance in a single transaction, which would have been the \$40 billion, and at that point in time, you know, expect to have, you know, Chase release the availability of the remaining 40 billion, I think, or of 40 billion that they had, and we were asked to coordinate with the clearance folks, to the best that they could, to try to monitor assets going and give priority of the assets to Barclays.

And that was -- it was a difficult task, but they, you know, they brought in extra people and tried to watch deliveries and that kind of thing. It was all on a manual basis so it was very difficult to do that, but they did the best they could with, you know, being that it was manual in nature.

Q. Why, if Chase was -- I mean, if -- excuse me. If Barclays was concerned about not sending the next 5 billion, why did they decide to go ahead and send 40 billion instead?

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A. I honestly don't know.

Q. And so were you eventually successful in releasing the remainder of the collateral that Barclays was expecting?

A. Well, as we discussed a little bit earlier, the -- we did manage to get over a total of 42 billion out of the 50 billion in collateral that we were expecting to send over.

Q. Okay. Am I correct to say that 42 billion -- they had 2 billion from the initial release from Chase and then so there was an additional 40 transferred over?

A. Rough approximation, that's correct.

Q. So now you're continuing to tell me the reasons that not all the Fed collateral made it to BONY. Are there any other reasons that you know of?

A. No, those are the primary items.

Q. Okay.

A. At least the ones that I was aware of. There might have been something else that I'm not aware of.

Q. I believe you said that approximately 8 billion did not make it from the Fed program

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to Bank of New York, correct?

A. There was, yes, that's correct.

Q. And so I know you don't know the exact numbers, but is 3 billion of that 8 billion the result of this initial shortfall problem that you just described?

A. I wouldn't have any way to determine that.

Q. I thought you said the initial release from Chase was supposed to be 5 billion and only about 2 billion made it to BONY out of that release; is that right?

A. That's correct.

Q. So --

A. But I don't know if what you're asking me is the -- is the 3 billion shortfall comprised of, you know, these GCF and whatever assets. I don't know what percentage of that was GCF or other deliveries or other transactions. That's, unfortunately, I have no way of knowing that.

Q. Okay. Was any of the 8 billion shortfall later transferred to BONY?

A. Well, what was transferred was a total

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of 42 billion. I mean, there was 8 billion of the Fed program, and those were Fed -- we probably need to make a distinction between the Fed program securities and what are deemed Fed wirable or Fed securities, right?

So there was, you know, what was held in the program, which were DTC-eligible securities, Fed wirable securities and that kind of thing. So the 8 billion shortfall, it was not only a shortfall of what was in the Fed program, it was basically a shortfall of Fed wirable security types.

So we found substitutes of a good portion of that 8 billion. I couldn't tell you the exact quantities, but that's why we were able to, you know, to manage to get, you know, a good portion of the collateral over to Bank of New York.

Q. I think I understood what you just said, but let me see if I can see if I got that right.

\$8 billion does not make it for any number of reasons to the BONY in the course of this transfer over Thursday night, and are you

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saying --

A. Well, let me clarify that. 8 billion that was initially intended to be transferred --

Q. Right.

A. -- was not going to be eligible to be transferred for various reasons.

Q. Okay. Then you relayed that 42 billion in securities ultimately did make it to BONY, right?

A. Uh-huh. Yes, that's correct.

Q. Now, was some of that 42 substitute securities for the 8 billion?

A. Yes, it was.

Q. Do you know how much?

A. I don't. I mean, we managed to make up as much as we could. I don't know the percentages of what was substituted from the original 8. I mean, at that point we knew 8 and there were other things that were causing problems. And then the goal became you need to get the \$50 billion worth of collateral over and make sure you get every collateral that doesn't have lien on it or unencumbered collateral that's eligible for the Barclays transaction

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over there.

So, you know, it stopped being about this pool or that pool or this type of collateral or that type of collateral. You know, there were specific, you know, buckets and things, but at a certain point in time, we were instructed by John Rodefled to deliver all eligible collateral that fit the criteria to Barclays in as most efficient, quick manner as possible.

Q. I had one question. I know we're talking round numbers here, but if you were supposed to deliver 50 and you delivered 42, how does the 7 billion box loan make up the entire difference? Was there -- seems to be another billion dollars missing.

A. Again, it was 42 and change that made it and there was I think it might have been just under 50. It was 49 and some mid to high change.

Q. So the --

A. You know, what's a half a billion between friends?

Q. So I just want to make sure I wasn't

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missing a billion here or there.

A. No. No.

Q. It's really the 50 billion that was supposed to make it, made it in the form of approximately 42 and change --

A. Yeah.

Q. -- in securities, and the balance was the box loan?

A. Yes, that's correct.

Q. What securities were used to secure the box loan?

A. I don't know the specific securities. I'm sure that could be provided by --

Q. Well --

A. I mean, if you're asking me like -- I think we talked a little bit about this before. There were securities which were unencumbered still at our clearance box at Chase. So Chase looked at the securities that were available and said, you know, you have market value that, you know, far exceed 7 billion.

So we requested a loan. They, you know -- we basically booked the transaction for a 7 billion loan on our books and Chase went

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ahead and allocated securities that they deemed appropriate that were being held in their clearance box.

Q. Am I correct to say that the assets used to secure that box loan had nothing to do with the assets you have just described that were supposed to go from the Fed program to BONY?

A. I wouldn't know specifically whether there were any circumstances where there might have been a Cusip that was or a security that was the same that were on the initial intended list. It's possible. I wouldn't know for sure.

Q. Okay. I see reference in some of the documents to something called fails on around Thursday. What is that term meant to entail, in your understanding?

A. The general term "fails" or --

Q. Well, I see it in the Thursday night e-mail traffic, and I just wondered how that term is used in connection with what we're just talking about, if at all.

A. Okay. Well, a fail is an interesting term, actually. It, for most operations

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professionals, a security transaction is booked, and until the point of delivery, it's considered a fail.

So that may mean if I book a transaction let's call it last night, 8 o'clock in the morning I haven't delivered it yet, it's still failing. You know, I may make delivery by the end of the day, and at that point, you know, it becomes cleaned up.

Other people in the industry refer to fails as, you know, after settlement date, but from an operations perspective, which is probably a good part of the mail you see, fails are related to undelivered securities at a particular point in time.

So on that day we had a enormous amount, as we talked about those, sort of those trades that were queued up before that I referenced, those were all pending deliveries or fails. So over the course of time, as availability -- as securities became available, those fails were getting cleaned up. So there were --

Q. Okay.

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2 on the morning of the 19th, somewhere in before
3 noon. I don't know exactly when it was.

4 Q. Changed to who?

5 A. Changed to Chase being the
6 beneficiary.

7 Q. Can we discuss for a couple minutes
8 the -- what happens to the September 18 repo
9 after it's now been collateralized and the box
10 loan has been granted? So there's a bunch of
11 collateral supporting that loan. What happens
12 on Friday with respect to that loan?

13 MR. SHAW: Foundation.

14 A. With respect to the overall loan, in
15 other words, the whole repo transaction, or the
16 loan to support the 7 billion in cash?

17 Q. The whole repo transaction.

18 A. The whole repo transaction, okay. So
19 as a result of the fact that we deposited the 7
20 billion in cash, you know, normal course is for
21 my group to work with tri-party operations to
22 try to maximize the efficiency of our
23 collateral.

24 So it's typical -- it's not typical to
25 leave cash on deposit as collateral. I mean,

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2 it's done on tri-party transactions in, you
3 know, somewhat normal course, but, you know,
4 ideally you try to substitute collateral.

5 So I had worked with the trading desk
6 and the Tri-Party Ops folks and we started
7 looking for collateral to substitute for that 7
8 billion. So that's I think we referenced a
9 little bit earlier the billion-35 that we had
10 come up with.

11 Q. Okay.

12 A. And again, the intent was to deliver
13 the billion-35 in and to receive a portion of
14 the cash -- equivalent market value of cash
15 back.

16 Q. And what ended up happening?

17 MR. SHAW: Objection. Foundation.

18 A. Yeah, I mean what ended up happening
19 was we lived up to our part, we delivered the
20 collateral in, and then there was some, you
21 know, some dispute about the cash and, you know,
22 some other things, and at the end of the day,
23 you know, we never got returned the cash by
24 Chase.

25 Q. Okay. On Friday of that week, LBI

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2 files for bankruptcy, correct?

3 A. That's correct.

4 Q. And do you recall any discussions
5 about whether that would cause a default of the
6 September 18 repo?

7 A. I think we talked about that a little
8 bit. I mean, you know, I started thinking about
9 it over the weekend, but I didn't have any real
10 conversations about it until I got a call from
11 the margin folks and until I sat down with Monty
12 and we talked about whether that was going to
13 trigger a default or not. Our assumption was
14 that it was going to.

15 Q. At some point over that weekend, you
16 work on transferring the collateral that was
17 used to support the September 18 repo to
18 Barclays, correct?

19 A. Not over the weekend, but --

20 Q. When --

21 A. The collateral was all transferred on
22 the night of the 18th, and then there was that
23 additional piece that we just talked about,
24 which was transferred on the 19th.

25 Q. Right.

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2 A. On the weekend we worked to try to
3 locate additional collateral that would be
4 eligible for a transfer.

5 Q. And that's the 1.4 billion we talked
6 about earlier?

7 A. That's the 1.4 billion, yeah.

8 Q. I had a question about that. Is that
9 1.4 billion as of that weekend; that's the value
10 of that collateral over that weekend?

11 A. That was --

12 MR. SHAW: Objection. Foundation.

13 A. Again, that was -- the 1.4 billion is
14 the assets that were actually transferred over a
15 period of time, ending I believe on the 29th of
16 September, and it was based off of values that
17 were -- I actually don't know what the value,
18 what they were based off of.

19 I think they were based off of some
20 initial list, but they wouldn't have been based
21 off of the date of transfer. Like nobody was --
22 I wasn't involved in any repricing of assets or
23 anything like that, so I believe they were based
24 off of initial pricing.

25 Q. You say you identified a pool of

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assets that were approximately worth 1.4 billion. Was that -- did Barclays end up getting all those assets?

A. Let me just --

MR. SHAW: Mischaracterizes prior testimony.

Q. Go ahead, Mr. Hraska.

A. I identified the list that I think was probably greater than 1.4 billion. The 1.4 billion was only the securities that truly made the transfer over. So, you know, we identified the list of everything that we thought was unencumbered and available for transfer. What was physically able to be transferred equaled approximately the 1.4 billion.

Q. And what happened to the rest of the assets that you identified? Were they ever transferred to Barclays?

A. They were hot.

Q. Does Barclays think it's entitled to those assets?

MR. SHAW: Objection. Foundation.

A. I honestly don't know.

Q. Since you've been working at Barclays,

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have you heard any discussions about whether they should be getting those assets?

A. I was instructed to continue to search for available collateral that was to be transferred to Barclays as part of the larger transaction between Barclays and Lehman, which I continue to do in my capacity in working with the Treasury folks and things like that, but I don't know specifically whether it was those same assets.

At that point in time, again, things had changed a little bit. You know, we stopped focusing on the repo because that had sort of been taking care of already and it was a matter of looking -- helping to continue to look for unencumbered assets.

Q. So, just so I understand, you identified a list of unencumbered assets that was, to your mind, worth more than 1.4, but only 1.4 made it to Barclays; is that right?

A. That's correct, yes.

Q. Do you know how much more than 1.4 the assets were that you identified?

MR. SHAW: Objection. Asked and

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answered.

A. I -- I know that it was probably in the neighborhood of around 2 billion, but I don't know how much more than that.

Q. Okay.

A. We had a lot of discussions about the assets that, you know, and I can't recall whether it was what is -- what ended up being the list was assets that are only in the DTC boxes or, you know, we were looking across international boxes and all that stuff. So there was just so much going and I know it was north 1.4. I want to say it was 2 billion, but I can't be sure.

Q. Were you involved, since you've been at Barclays, have you been involved in any efforts to prepare an opening balance sheet that would relate to the Lehman/Barclays transaction?

A. No.

Q. Did you have any role in connection with their declaration -- or, let me withdraw that. Do you have any knowledge of or understanding of how Barclays was able to declare a \$4.2 billion gain on acquisition as a

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result of this transaction?

A. No.

Q. Do you have any current role in the preparation of Barclays' balance sheets?

A. No, the typically balance sheet and things like that are performed by the Finance folks and Product Control folks, which is completely aware from Operations.

Q. Do you give them any input during the course of their preparation of the balance sheets?

A. If they have questions as to the nature of transaction -- are we talking related to the transaction between LBI and --

Q. Yes.

A. Okay. I have provided information as to that transaction on the 18th and what assets were transferred over, and I provided some information around 1.4 billion as to what those assets were that made it to Barclays, but as far as determination of balance sheet or if those assets were eligible for balance sheet, I don't have any knowledge of that.

Q. Okay. When you say -- who did you

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provide that information to? The Treasury Department?

A. That would have been, yeah, Paolo and his team.

Q. How did you come to be involved in what we have called Schedule A and Schedule B?

A. Well, I guess I provided the assets that ultimately became -- I provided lists of assets that ultimately became Schedule A and Schedule B. I was asked to provide schedules of the assets that made it to Bank of New York, which we did, and then as well as, you know -- you know, and over a period of dates, right?

So, to be very simple, I basically provided a spreadsheet with tabs that said on this date we moved these assets, on this date we moved these assets, and those subsequently became categorized as either Schedule A or Schedule B, depending on I guess the timing of the transfer.

Q. Do you have any knowledge of what has been called a clarification letter in connection with this transaction?

A. I've had -- I've heard the term, but

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honestly I don't know what it means.

Q. Have you ever read anything called a clarification letter?

A. No.

Q. You have to say verbally say no?

A. I'm sorry. No.

Q. Did you have any understanding when you were preparing these schedules that that would become Schedules A and B to a clarification letter?

A. No.

Q. Did you have any understanding of the purpose of this clarification letter?

A. No.

Q. I want to spend a little time going through these schedules. Do you want to take a break before we do that?

MR. SHAW: Why don't we take a short break before we do that.

THE WITNESS: Thank you.

(Recess; Time Noted: 11:33 A.M.)

(Time Noted: 11:40 A.M.)

BY MR. HINE:

Q. Mr. Hraska, I now want to talk about

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Schedules A and B, so this is going to be the 30(b)(6) portion of your deposition because that's the two topics that you have been designated in part to cover.

So what I'd like to do is walk through some of the different schedules that I have seen and discuss them in connection with Schedules A and B.

A. Okay.

(Exhibit 139B, Printout of Schedules, marked for identification, as of this date.)

Q. Mr. Hraska, I'm handing you a document which I've marked as Exhibit 139B.

A. Okay.

Q. Which is a voluminous printout of schedules of some sort. It is marked with the Bates stamps BCI-EX-00009798 through 10368.

MR. SHAW: I'm not suggesting you read this cover to cover, but take whatever time you need to review.

Q. I'm not going to ask you questions about detailed entries in here, but I'm going to ask you questions primarily about the first two pages, but take whatever time you need just to

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familiarize yourself with the document.

A. Thank you.

(Document review.)

A. Okay.

Q. Have you had a chance to review it briefly?

A. I have, yes.

Q. Have you ever seen this document before?

A. Yes, I have. I created it.

Q. And is this a -- or, well, let's start this way. What is this document?

A. This is an e-mail to John Rodefald, who was Barclays, as we mentioned, Operations, and Kevin Caffrey, who is the managing director at Bank of New York in charge of like clearing, custody, tri-party, things like that.

And what I was looking to do here was to confirm what Lehman believed that, you know, they transferred as a result of the repo transaction on the 18th. We wanted to reconcile -- we wanted to do a three-way reconciliation. Basically, we wanted Lehman's books to tie out with both Barclays and with

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Bank of New York so that we could confirm the secured identifiers, the par amounts, and things like that of the transaction.

And so the spreadsheet itself attached was my department's collaboration of what we believed we transferred on the 18th, and then the last point here is me reaching out to Kevin to talk about, you know, clearance relationships going forward for the broker-dealer, LBI.

Q. That's point number 4 on the e-mail you're talking about?

A. That's point number 4 on the e-mail, yes.

Q. Can you turn to the second page of this document?

MR. SHAW: That's the one with the Bates number ending in 9799?

MR. HINE: Correct.

Q. That's a very small chart with columns A and B, do you see that?

A. Uh-huh.

Q. Now, I think I understand what this is, but could you explain to me what you understand this chart to be capturing?

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A. This chart was my group's attempt to summarize the market value on the collateral in these appropriate buckets just to give people an understanding of the composition of the collateral and market value that we associated with that.

So the Fed collateral would be -- the Fed wirable type collateral, as I defined earlier, and then 74 and 636 would have been the positions that came out of the Depository Trust Company.

And then what's referred to as TP cash is the 7 billion pure cash that we talked about as well.

Q. Okay. The TP cash is the proceeds from the box loan that we talked when earlier?

A. Yes, that's correct.

Q. And when you say "Fed wirable," that is the -- that is securities that were successfully transferred from the Fed program to BONY on Thursday; is that right?

A. No, let me clarify that. Those are the securities that were transferred that were Fed wirable security types because the

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securities that were transferred were this entire list other than TP cash.

Q. Okay.

A. Because these other two are included in the Fed program. So this was Fed program securities that were Fed wire eligible. That's what that first line is.

Q. What does "Fed wire eligible" mean?

A. Well, Fed wire eligible is a type of security that's transferred on the Federal Reserve's book entry transfer system. So examples are U.S. Treasuries, Fannie Maes, Ginne Maes, collateral types of those classes.

Other types of collateral are typically transferred through DTC, which is represented by the participant IDs here, DTC participant IDs.

Q. Just to harken back to our prior discussion, this reflects the approximately 42 billion in securities plus the 7 billion in cash that was ultimately transferred under the September 18th repo, correct?

A. That's correct.

Q. Now, how were these market values

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determined?

A. I don't know how they were determined. They were provided from what Lehman had in their systems at the time.

Q. So these are Lehman's values?

A. I know those to be Lehman's values.

Q. And I think we might have touched on this before, but Bank of New York ascribed its own values to those securities?

A. They did, yes.

Q. So am I correct to say that this chart and spreadsheet would not include Bank of New York valuations, but only included the Lehman valuations?

A. That would be correct, yes.

Q. Okay. Now, did you get -- your covering e-mail asks I presume Mr. Rodefeld and Mr. Caffrey to verify the positions. Did they in fact try to do that?

A. Yes, we did that. They sent us back files and we reconciled all the positions.

Q. Okay. Let me show you another chart. I think it'll relate to the story, but I'm not sure.

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Mr. Hraska, I hand you an exhibit that's previously been marked as Exhibit 83B, which is an e-mail dated Sunday, September 21st.

MR. SHAW: Do you have a copy which is not cut off on the side?

MR. HINE: We'll try to locate one.

MR. SHAW: He needs one that's complete rather than ...

(Document handed.)

A. Okay.

Q. Mr. Hraska, have you had a chance to look at the document?

A. I have.

Q. Have you ever seen this document before?

A. No.

Q. To your knowledge, are the people listed in the "to" and "from" portions of the e-mail Barclays employees, generally?

A. Primarily, yes.

Q. You'll see in the first -- the first bullet point in the text that says, "We should book all positions from the Lehman financing facility to BCI (approximately 45 billion)

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securities. See attached files." Do you see that?

A. I do see that, yes.

Q. When you had this effort to reconcile your position with Barclays and BONY, did you ever hear the figure of approximately 45 billion used as the value for the securities that were in the September 18 repo?

A. No, not specifically 45 billion.

Q. Do you have any knowledge of where this figure might have come from?

A. Unfortunately, no. I don't think I'm CC'd on here. I didn't see myself and I don't recognize it.

Q. No, you're not CC'd. I'm just wondering, in your discussions between at or about, you know, Saturday, Sunday that weekend, if you heard any use of a number of about 45 billion in connection with the securities that were listed in your prior exhibit?

MR. SHAW: Objection. Asked and answered.

A. I hadn't heard any discussions related to 45 billion securities. People mistakenly,

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like we were talking terms earlier, referred to the \$45 billion in cash. So it's possible that somebody was referring to the cash and not securities here, but I'm speculating on that. I don't really know.

Q. Can you describe for me the reconciliation process that took place with respect to these securities? Was there a debate as to the value assigned to the securities?

MR. SHAW: Objection to form.

A. There was --

MR. SHAW: And foundation.

A. There was -- from an operations perspective, our primary objective was to make sure that the quantities and the Cusips all matched. You know, as we talked about the market values that we knew were based off of Lehman's systems, there was some discussion about the value of the securities.

I wasn't privy to the actual discussions. I knew there was going to be a value -- a discussion about value of securities because Bank of New York informed me that they didn't agree with some of the pricing that we

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had attached to some of these securities.

Q. And what did they tell you about that?

A. Very generically, they basically said that we're going to have to review these prices, we don't necessarily agree with these, and at that point it kind of went out of my camp, because, again, I don't really deal with the pricing side of it. I just have to make sure the securities make it, the right quantities make it, there's no stock record breaks and all that kind of stuff.

Q. Who deals with the pricing part of it?

A. The pricing part at both Barclays and at Lehman would be handled by the Financial Control folks. So I would say like, you know, in the current organization, I guess Marty Klein and those folks, and at Lehman it would have been Gerry Reilly's organization.

Q. Okay. Is there any, in this reconciliation effort that you talked about, is there a reconciliation as to price or is it just the identifying Cusips and the particular securities that were transferred?

A. My reconciliation was purely to

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securities quantities, that kind of thing. And like I said, I know that the finance teams were going back and forth on the pricing issue, but, unfortunately, I didn't really partake in those discussions.

Q. Do you know how -- what price they arrived at at the end?

A. I don't, unfortunately.

Q. It appears in some documents that the BONY pricing was higher than the prices ascribed to the securities on your -- on the prior exhibit. Do you have any idea why that would be the case?

MR. SHAW: Objection to form.

A. I don't. It's actually very surprising to me as well, because the initial conversation that I just referenced a few minutes ago was from Bank of New York that we had over-valued a few securities and, therefore, they were concerned about the total market value that we had sent them. So, you know...

Q. Do you recall any discussions about writing down the value of securities during this period?

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MR. SHAW: Objection to form.

A. During -- could I ask a clarification? During which period? During the period at any point in time after the transaction, or during like a period of the week, or what point in time?

Q. Let's break it down. Let's talk about this -- during this reconciliation period that you mentioned, which I take it is from Friday, the 19th, through the weekend, correct?

A. Okay.

Q. So were there any discussions during that period about writing down the value of securities?

MR. SHAW: Just so we're clear, because this is a 30(b)(6), are there discussions that he participated in?

MR. HINE: That he's aware of.

A. I'm aware there were discussions about the values of the securities. As to writing up or down, I wasn't made privy to that.

Q. At any time during this week were you privy to any discussions where the possibility of writing down the value of securities was

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discussed?

A. No.

Q. So, back to Exhibit 83B, based on your experience, is it fair to assume that this is probably a document generated by Barclays in connection with that reconciliation effort that you were discussing?

A. I would assume that's the case, yes.

Q. Okay. But you have no specific knowledge about how this document was prepared or --

A. I don't, unfortunately, no.

Q. Mr. Hraska, I'm handing you a copy of a document marked as Exhibit 84B. If you wouldn't mind taking a moment to review it. Just for the record, the document is Bates-stamped BCI-008149 through 8670. (Document review.)

A. Presentation of these is definitely not user-friendly.

Q. Forced to print them out for purposes of a deposition.

A. I understand that.

(Document review.)

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A. Okay.

Q. Have you had a chance to look at the document?

A. I have.

Q. Have you ever seen this document before?

A. No. Well, actually, I have seen this in the preparation to my -- this portion of the deposition.

Q. Okay.

A. I actually reviewed some files, and I believe this is one of the ones on that list. I'm not a hundred percent sure, but I think it is.

Q. Okay. Other than your preparation for this deposition, do you recall seeing this document at all?

A. No.

Q. I noticed they misspelled your name on the front. Is that a possible reason why you might have not received this document?

A. Yeah, because it wouldn't have gone to my e-mail, if that's the case.

Q. Would it be fair to say you have no

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familiarity with how this document was prepared?

A. That's true.

Q. Okay. And the covering e-mail says -- it's an e-mail from Mr. Yang, which says, "I've attached a schedule produced by Barclays' Ops of the collateral currently held at BONY under the repo financing provided to Lehman." It continues to say that -- it says "a total BONY market value of approximately 45 billion." You see that?

A. I do, yes.

Q. Is it probably safe to assume that this was prepared in connection with your reconciliation effort between Lehman and Bank of New York and Barclays as to the securities that were involved in the September 18 repo?

MR. SHAW: Objection. Foundation.
Calls for speculation.

A. Yeah, I guess it's fair to assume then.

Q. Again, do you see the number of 45 billion?

A. Uh-huh.

Q. Does this refresh your recollection at

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all or does this remind you of anything in connection with how Bank of New York valued this pool of securities?

MR. SHAW: Objection to form.

A. Unfortunately, not. I mean, I -- the only 45 billion that I was aware of was the actual principal value, and I don't remember assets being referred to as 45 billion in any of the conversations that I had.

Q. Okay. And when you say the principal value, you're talking about the amount of --

A. Cash extended on the transaction.

Q. Okay. So is it correct to say that in this reconciliation process that you discussed you don't recall anyone ever mentioning a value of this pool of securities being about \$45 billion?

MR. SHAW: Asked and answered.

A. That's correct.

Q. So, just to complete the record, you have no way of explaining how this value in this document would differ with the \$42.9 billion number in Exhibit -- in the prior exhibit that you looked at; is that right?

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MR. SHAW: Prior exhibit, are you referring to 139B?

Q. 139B. Let me rephrase the question.

A. Okay.

Q. In Exhibit 139B --

A. Right, that's my document.

Q. -- which is the document you prepared, has a value of 42.9 billion, approximately?

A. Right.

Q. This one seems to ascribe a value of 45 billion.

A. Okay.

Q. Do you have any way to -- any explanation for why they would come to different values?

MR. SHAW: Objection. Calls for speculation.

A. My opinion is that the Lehman pricing was different than the Bank of New York pricing.

Q. In what way?

A. Well, in the tune of \$3 billion. I mean -- I mean, I'm not trying to be sarcastic. I mean, you know, to the extent that they're valuing a pool of collateral at 45 and we're

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valuing it at 42, the average price on a basket basis would mean that they valued the basket higher. I'm sure there were multiple assets where there were pricing differentials, but as an aggregate, it appears that they gave higher values to most securities.

Q. Let me ask you this. In this reconciliation -- well, scratch that. The difference could arise, could it not, either from how you value individual securities or whether you have the same pool of securities that you're looking at, correct?

A. That's correct. I thought the -- yes, okay.

Q. Well, my question is, in this reconciliation process, did it end up that there was a vast difference in the pool of securities that were being considered?

A. That's a different question.

Q. Between the Barclays folks and your list?

A. From a security delivery perspective, we tied out completely to the number of securities and the security identifiers that we

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2 delivered versus what Bank of New York and
3 Barclays knew.

4 Q. When you say "tied out"?

5 A. "Tied out," meaning we reconciled that
6 there were no discrepancies.

7 Q. So the difference in any values would
8 have to be in the method of pricing, then,
9 correct?

10 A. Yes, the one thing, we tied out -- the
11 tieout process took a few days, so I don't know
12 whether on September 22 we were completely tied
13 out, but the initial tieout itself, though,
14 there were minimal, minimal discrepancies. I
15 would say, you know, probably less than a
16 hundred.

17 Q. So would you agree with me, then, that
18 if there is a difference in pricing, it would
19 probably be the result of how you price
20 individual securities instead of --

21 A. And not so much --

22 Q. -- the composition of the pool?

23 MR. SHAW: Objection to form. You
24 need to let him finish his question and then
25 let me object so we have a clean record.

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2 A. So then could you repeat the question?

3 (Record read.)

4 MR. SHAW: Objection to form.

5 A. Yes.

6 Q. Okay.

7 (Exhibit 140B, a document bearing
8 Bates Nos. BCI-CG00052538 through 53173,
9 marked for identification, as of this date.)

10 Q. Mr. Hraska, I'm handing you a document
11 that's been marked as Exhibit 140B.

12 A. Okay.

13 Q. Again, another voluminous schedule
14 with Bates Nos. BCI-CG-00052538 through 53173.
15 And again, it's a voluminous schedule, but take
16 your time to review it.

17 A. Uh-huh.

18 Q. I was really going to ask you about
19 the, primarily, the first and last page.

20 A. Okay.

21 (Document review.)

22 A. Okay.

23 Q. Mr. Hraska, have you had a chance to
24 look at it briefly?

25 A. I have, yes.

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2 Q. You'll see the -- first of all, have
3 you ever seen this document before?

4 A. In preparation for the deposition,
5 yes, but other than that, no.

6 Q. Okay. You'll see on the cover page
7 that this is dated Friday, September 26?

8 A. Uh-huh.

9 Q. And at the bottom of the covering
10 e-mail it mentions Schedule A, you see that?

11 A. Okay.

12 Q. It says here, "Our guys are still
13 running the reconciliation to confirm that there
14 are no errors in the Barclays list." Do you see
15 that?

16 A. Uh-huh.

17 Q. And then if you turn to the last tab
18 in the document, it's a lengthy schedule which
19 concludes with a number, a figure on the last
20 page --

21 A. The last page?

22 Q. -- of 44, of approximately \$44.1
23 billion, do you see that?

24 A. I do, yes.

25 Q. And so my question is, do you have any

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2 understanding of why the value of this schedule
3 of the securities embodied in the schedule is
4 now at this point in time at \$44.1 billion as
5 opposed to the 42.9 that we saw earlier?

6 A. No is the short answer. We talked
7 earlier about pricing differentials. So, to me,
8 I don't know whether this is a Lehman-produced
9 or Barclays produced it. It doesn't appear to
10 me to be a Lehman-produced, so ...

11 Q. When you say it doesn't appear to be a
12 Lehman-produced document, are you referring to
13 the last tab, which is purportedly Schedule A?

14 A. Well, this is an e-mail I wasn't
15 included on.

16 Q. Right.

17 A. So it doesn't look like the format of
18 any of the files that I produced, so that's why
19 I'm assuming -- well, me being Lehman at the
20 time, Lehman-produced.

21 Q. Okay. Do you recall the figure \$44.1
22 billion ever being used in connection with the
23 value of the securities on Schedule A?

24 A. No.

25 Q. And I think you said earlier, but I

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Q. I know you're not -- you didn't recognize some of the other numbers we just talked about. So, in your mind, approximately 42.9 billion is the value of the securities on Schedule A, correct?

MR. SHAW: Objection.

Mischaracterizes. You can --

A. It was the value that I knew at the time of transfer, and whether or not that value changed or was subsequently discussed, I don't know, but it was the value that I knew at the time of transfer.

Q. Okay. And you weren't involved in any discussions about other values with respect to that schedule, correct?

A. No.

Q. And do you think that's the value in your mind of the final version of Schedule A?

MR. SHAW: Objection to form.

A. Again, I don't know if it was the final version. I know it was the value when I transferred it.

Q. Maybe that was a bad question. Did Schedule A change in composition, to your

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knowledge, from the original chart that we looked at?

A. In composition of securities? The number of securities and things like that? The schedule did not change. The pricing may have changed.

Q. Okay. But you don't have any knowledge of whether the pricing changed?

A. Other than the knowledge of looking at these documents here, there's obviously a discrepancy, but no upfront knowledge that it changed.

Q. And you don't have any knowledge of the value of any securities on Schedule A being written down in connection with this reconciliation process?

A. No. You asked that earlier, right? No.

Q. Do you recall what the par value was for the security listed on Schedule A?

A. I don't, no.

Q. Okay. That's all I have with that document.

Mr. Hraska, you were involved in

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preparing Schedule B, correct?

A. I was involved in giving a list of unencumbered collateral, which I understand some of which became Schedule B.

Q. But you're not familiar with the terms Part 1 and Part 2 of Schedule B; is that right?

A. No.

Q. Are you familiar with any kind of discussions about the valuation of the securities that are on Schedule B?

A. Well, there was the valuation that I knew to have transferred, which is 1.4 billion. I don't know what the ultimate valuation of that or the -- I don't know what the final version of that list was or the market value associated with that, so ...

Q. Do you recall any discussions about any discrepancies in the valuation of the securities that comprised Schedule B?

A. I remember there being discussions in valuation of those securities, discrepancies in general. I don't know whether they were specifically Schedule B or if they were just purely related to the repo we were discussing

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earlier, so ...

Q. Well, I guess I'm just trying to -- was there a reconciliation process that went on with respect to the securities in Schedule B?

A. There was a -- there was a reconciliation process from the standpoint of we were asked what securities were delivered, which we provided to the Finance folks, and the Finance folks did a spreadsheet compared to what they knew to be Schedule B and at one point told us something along the lines of -- I don't remember whether it was 800 Cusips or 800 million in value, but there was a number of 800, which whatever was the discrepancy on that. I believe it was Cusips.

Q. 800 Cusips?

A. 800 Cusips or security identifiers which weren't delivered.

Q. And was that reconciled in some way?

MR. SHAW: Objection to form.

A. The Cusips in question were looked at by the Clearance folks and my teams as to whether they were delivered or whether they could be delivered, and we verified that in fact

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2 they were not delivered.

3 Q. And was there any effort to then
4 deliver them later?

5 A. There was an effort to see if they
6 were available for delivery, and in most
7 instances, they were actually not available for
8 delivery.

9 Q. So was any further action taken on
10 that?

11 A. For that -- for the particular
12 securities on that list, no.

13 Q. Were substitute securities delivered
14 instead?

15 A. Substitute securities were not
16 delivered.

17 Let me just think about that. Yeah,
18 no, there was no substitute securities delivered
19 after that, no.

20 Q. Was that possibility considered?

21 MR. SHAW: Objection to form,
22 foundation.

23 A. That possibility was considered.
24 There was conversations that I had with the
25 Treasury folks, who were prior legacy Lehman,

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2 but now, as a result of the timing, were now
3 employed by Barclays, so Robert Azerad and those
4 folks, as to whether or not there were other
5 securities which were unencumbered that could be
6 substituted for the securities that could not be
7 delivered on the original Schedule B.

8 Q. And what was the result of that
9 discussion?

10 A. The result of that discussion was is
11 that we went through yet again another
12 identification process to try to locate
13 unencumbered securities that were available or
14 that could be made available to transfer. At
15 that point in time, by then, we no longer had
16 capability to just go ahead and make a transfer.
17 It would have been subject to approval by
18 Deloitte and a few other folks before anything
19 could be done.

20 Q. So where does that effort now stand?

21 A. The effort basically concluded with a
22 subsequent set of lists that, you know, we feel
23 are securities that are eligible to be
24 transferred to Barclays.

25 Q. And why have they not been

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2 transferred?

3 MR. SHAW: Objection to form and
4 foundation.

5 A. The clearance boxes in which they
6 reside are presently under administration. So,
7 as Barclays employees, we wouldn't have the
8 ability to go and make those transfers without
9 the administration's approval.

10 Q. So does Barclays thinks it's entitled
11 to these securities?

12 A. I'm not a hundred percent sure what
13 Barclays thinks. I was asked to go find
14 something that was unencumbered in the Lehman
15 boxes, which I did. I would speculate that
16 Barclays would think they're entitled if they
17 asked me to do that exercise.

18 Q. Who would know at Barclays whether
19 they think they're entitled to those securities?

20 MR. SHAW: Objection to form,
21 foundation.

22 A. I would start with the Treasury team
23 and possibly the Legal team.

24 Q. And who is the Treasury team to which
25 you are referring?

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2 A. Robert Azerad would be the point
3 person that I would use, or Alan Kaplan in
4 Legal.

5 Q. Can you tell me an approximate value
6 for those securities that are -- that you
7 identified that were not able to be transferred?

8 A. I would say 6 to 7 hundred million.

9 Q. And that's based on Lehman valuations?

10 A. Based on Lehman valuations at a
11 particular point in time, which was November 17
12 of 2008.

13 Q. Just so I have a little clarity, this
14 effort to identify these additional securities
15 took place after you transferred over to
16 Barclays?

17 A. That's correct.

18 Q. Did it start during the weekend of
19 September 20th at all?

20 A. This particular exercise, no. It
21 started I would say early October.

22 Q. Okay. We had -- in discussing
23 Schedule A, I think you said there was a
24 reconciliation effort, but to the extent there
25 was an effort to reconcile the values, that's

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really not something that fell under your purview; is that right?

A. That's correct.

Q. Now, is that the same case for reconciliation efforts related to Schedule B?

A. With regards to the valuation?

Q. Yes.

A. Yes.

Q. So who would I ask about that if I wanted to learn about efforts to reconcile values related to Schedule B?

A. Robert Azerad would be your best source.

Q. Am I correct to say that you were, to the extent you were involved in reconciling anything with respect to Schedule B, it would be related to locating securities and Cusips numbers and identifying what would comprise the pool of Schedule B; is that right?

A. Yes, we reconciled what was given to -- well, we were given an exception list of what was, you know, what we believe was delivered versus what was on the original Schedule B, and we were asked to verify that

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those securities were in fact delivered.

Q. And were they?

A. They were not. Well, securities that were delivered were delivered, but the securities that were given as an exception were not delivered.

Q. And that's the 800 Cusips you mentioned?

A. That's approximately 800, somewhere in that number.

MR. SHAW: Does it make sense to take a lunch break sometime soon?

MR. HINE: Let me just finish up on this.

Q. Other than those 800 Cusips that you mentioned, were there any other discrepancies that you came across in your efforts to reconcile the transfer of securities under Schedule B?

A. Under Schedule B, no.

Q. So am I correct to say -- I think previously you used the phrase "tie-in." Did your -- Lehman's records of the transfers for Schedule B securities tie in with the Barclays

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records other than this 800 Cusips that you mentioned?

A. Yes.

MR. HINE: Why don't we break for lunch.

THE WITNESS: Okay. That would be great. Thanks.

(Recess; Time noted: 12:34 P.M.)

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AFTERNOON SESSION

(Time Noted: 1:19 P.M.)

JAMES HRASKA, resumed and testified further as follows:

EXAMINATION BY (Cont'd.)

MR. HINE:

Q. Good afternoon, Mr. Hraska.

A. Good afternoon.

Q. I just had a couple of follow-up questions with some of the schedules we talked about. Just look briefly at 84B. That's the one where your name is misspelled on the front page. You see that?

A. Okay. That's correct.

Q. I think I see some e-mails that suggest you did eventually get this document; is that right?

A. I may have. I, honestly, I don't know.

Q. You don't recall?

A. No.

Q. Okay. That's fine. That's all I had on this one. I just wanted to clarify that one issue.

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GFS system?

A. They were extracted out of GFS. They were existing prices that were -- that were I guess downloaded into a spreadsheet.

Q. And where were they downloaded from?

A. From GFS.

Q. Okay. But where does GFS get them, do you know? I mean, I'm trying to find out what's the origin of those prices. I understand you downloaded them from the GFS system.

A. Right.

Q. Where does the GFS system get those prices?

A. I can tell you generically it gets pricing -- it gets its pricing from various vendor sources and there's a hierarchy of vendor selection.

Q. Uh-huh.

A. And to the extent there's no price, typically the Product Control organization would talk to traders to get traders' marks.

Q. Okay. So where there's no market information, the traders themselves can do -- do they use a model of some sort?

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A. How they would determine the marks I don't know, unfortunately.

Q. Okay. Any other sources of data that would go into that pricing?

A. From my perspective, no.

Q. When you actually prepared that spreadsheet, how did you instruct the GFS system to give you those prices?

A. Well, I -- actually, the spreadsheet itself was created by somebody who works for me, which is Nancy Denig.

Q. Okay.

A. And I know the methodology in how she got the prices, but if you're asking me specifically how did I mechanically pull the prices, I don't know, because unfortunately --

Q. She would know?

A. Yeah.

Q. I guess I'm trying to understand, if I wanted to recreate those prices, how would I go about doing it if I had access to the GFS system, do you know?

A. You would look to the data from that specific date and you would want to download the

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pricing from that date, if it was available.

Q. But Nancy Denig is the one who actually did that downloading to prepare this spreadsheet?

A. She obtained the prices. I don't know whether it was her that downloaded it or a technologist that provided it or -- but she obtained the pricing for it.

Q. Did any of those values come from any source other than the GFS system, do you know?

A. That I wouldn't know. I mean, what I know is that we got it from GFS. Other than the methodology of how GFS got them other than what I have described, I mean, I don't really know.

Q. Okay. Very good.

Mr. Hraska, you were talking about the 800 Cusips that you identified but never made it to Barclays?

A. Uh-huh.

Q. Remember that testimony?

A. Uh-huh.

MR. SHAW: You need to say yes or no.

A. I'm sorry. Yes.

Q. Where were those Cusips residing

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before you identified them?

A. Could you be more specific?

Q. Well, when did you identify the 800 Cusips?

MR. SHAW: Objection to form.

A. The 800 Cusips were not actually identified by me. They were identified by the Finance organization as Cusips which were on Schedule B but were not on the list of securities that we had transferred over to Barclays.

Q. So where are those Cusips now?

A. From a location perspective or a --

Q. Well, where are those securities now?

A. The securities themselves? They would be still in Lehman clearance boxes.

Q. Okay. Do you know which boxes or --

A. Well, various boxes.

Q. Okay. You don't know specific -- well, let me ask you this way: Is there a list somewhere of these 800 Cusips?

A. Well, the list of the 800 Cusips is the list. I'm sorry, I'm not --

Q. Is there a file in Barclays that has a

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list of these 800 Cusips?

A. Yeah, that would have been the file that the Finance organization had sent to me that they asked me to look at these 800.

Q. So if I find an e-mail -- I would find an e-mail, presumably, with an attachment of 800 Cusips addressed to you?

A. Yeah, that's reasonable. If not to me, it would have been to somebody either in my organization or to my manager, who subsequently forwarded it to me.

Q. And how do I find out what boxes those 800 Cusips are in now?

A. I honestly don't know.

Q. Were you involved at all since your time at Barclays in any efforts to sell any of the securities that came over to Barclays as part of Schedules A or B?

A. No.

Q. Do you have any knowledge about any efforts to sell those securities?

A. No.

Q. Do you have any understanding about whether they were sold or not?

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A. No.

Q. Do you have any understanding about whether they were sold at prices differing from the ones that are on your sheet?

A. No.

Q. Who would I ask those types of questions to? Who would know that at Barclays?

MR. SHAW: Objection. Foundation.

Answer if you know.

A. Trading desk at Barclays.

Q. Who's in charge of the trading desk at Barclays?

A. Fixed Income would be Harry Harrison.

Q. Okay. Is it fair to say that you have no involvement in the sale of those securities since you've been at Barclays?

A. That's true.

Q. Do you have any involvement in -- and I think I might have asked this previously, but I just want to close this loop -- do you have any involvement in how Barclays accounts for the assets that came over on Schedules A and B?

A. The accounting treatment of the assets?

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Q. Yes.

A. No.

Q. Do you have any involvement in how Barclays translated the values of those securities to its balance sheet?

A. No.

Q. Okay. I think we'll conclude the 30(b)(6) portion of the deposition, but I still have a few more questions to ask you, unfortunately.

A. That's okay.

Q. Mr. Hraska, I'm handing you a copy of an exhibit that's previously been marked as number 25. It's what we have been referring to as the clarification letter. And I know you testified earlier that you had no real familiarity with this, but I wanted to see if you'd just take a minute to review it so I can confirm that.

A. Okay.

(Document review.)

A. I can confirm this is not familiar to me. I haven't seen this document.

Q. Let me just ask it for the record.

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Have you ever seen this document before?

A. No.

Q. If I recall correctly, is it correct to say you have no understanding of why this clarification letter was prepared in connection with the Barclays/Lehman transaction?

A. That's correct.

Q. If you look on page -- the paragraph that ends at the bottom of page 1 and continues on to page 2?

A. Okay.

Q. You'll see references to Schedule A and a Schedule B. You see where I'm referring to?

A. The A and B in parentheses -- oh, no, further down. "As specified in Schedule A," okay.

Q. I know we've been talking about those schedules, but did you have any understanding when you were working on those schedules that they would somehow comprise purchased assets under the agreement between Barclays and Lehman?

A. No.

Q. Okay. If we turn to the next --

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testified about that earlier?

A. Yes.

MR. SHAW: Object. Just so we're clear, I don't think he testified there was a transfer from the Fed to the Bank of New York, unless I misunderstood it.

Q. I think you testified there was a movement of collateral from the Fed financing to the Bank of New York financing?

MR. SHAW: Right. The question is whether Chase was --

Q. I understand. I'm not trying to mischaracterize your testimony. I just want to bring you to that period of time where you were working on the transfer of collateral that had previously supported the Fed to now supporting the September 18 repo; do you recall your testimony on that?

A. Yes.

Q. Okay. Were there any assets that were supposed to be excluded from that?

MR. SHAW: Objection. Foundation. Calls for speculation. Calls for legal conclusion.

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A. There were -- there was a list of eligible collateral types and there was one particular Cusip that was very specifically supposed to be excluded.

Q. Which was what?

A. It was called a Racer Note.

Q. Okay. Who wanted it excluded?

A. Barclays.

Q. Okay. So am I correct to say Barclays would not accept that as a form of collateral for the September 18 repo?

A. Yes, that's correct.

Q. Did they have any other restrictions on the types of collateral that could be posted toward the September 18 repo?

MR. SHAW: Objection to form.

A. They -- there was a list that was provided, and I believe we referenced the list as we were -- as we were searching for available collateral.

Q. What types of collateral were excluded?

A. Honestly, we didn't look at the collateral type so much as we focused on the

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body of Cusips, and we kept doing look-ups against that body of Cusips to make sure that we were not including those Cusips.

Q. Why did Barclays not want the racer securities --

MR. SHAW: Objection. Foundation.

Q. -- posted as collateral?

MR. SHAW: Calls for speculation.

A. In my opinion, racer note is something that is backed partially by the credit of Lehman. So if you're extending credit to somebody, you wouldn't want to take collateral of the same credit.

Q. Okay. Is that the only reason?

A. That's my opinion.

MR. SHAW: Same objection.

A. I don't -- I assume Barclays made the same conclusion, but I don't know.

Q. Okay. Was Barclays unwilling to accept as collateral securities that were tied to mortgages?

MR. SHAW: Objection to form.

A. There, back to what I said earlier, there may have been mortgages or mortgage-type

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collateral on that Cusip exclusion list.

Q. Do you know one way or the other whether there was?

A. Definitely, no.

Q. When we talk about mortgages, I see the phrase "resis," R-E-S-I-S. Is that a term you are familiar with?

A. Well, mortgage collateral is a pretty wide array. A resi, a residential mortgage, is a type of mortgage security, yes.

Q. Okay. And did Barclays exclude residential mortgages from the list of acceptable collateral?

MR. SHAW: Objection to form.

A. I don't know whether they excluded it as a complete asset class or not.

Q. Do you recall any discussions about whether residential mortgages, mortgage-backed securities could be transferred to Barclays during that week?

A. I remember there was a discussion of it. I don't remember the outcome of it.

Q. Okay. Do you have any recollection at all about it?

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A. The only recollection I have is that the person who ran the middle office at the time was -- was involved with looking at the residential portfolio, but other than that, I don't -- I don't know what the outcome of that was.

(Exhibit 143B, an e-mail chain, the first in time dated September 17, 2008, at 2:42, with attachment, marked for identification, as of this date.)

Q. Mr. Hraska, I'm handing you a document marked as Exhibit 143B, which is an e-mail stream dated September 18, 2008, and an attachment. Will you please take a moment to review the document?

A. Sure.

(Document review.)

A. Okay.

Q. Have you had a chance to look at the document?

A. I did.

Q. Have you ever seen this document before?

A. Yes, I have.

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Q. What is this?

A. This was an e-mail string that was sent to me and then I forwarded it on to one of the financing traders on the trading desk.

Q. That's Mr. Webb?

A. That's Mr. Webb.

Q. And what's the attachment to this document?

A. The attachment to this doc was a file that was a file of assets that Barclays did not want, included on the pledge of the repo.

Q. Is this the list you had previously mentioned about excluded assets?

A. Yes.

Q. And this was a list provided by Barclays to Lehman?

A. Well, it was provided to me from Lehman. I think the person who originated this is David Petrie. Yes, Dave Petrie was Barclays. So the answer to that would be yes.

Q. So, as I understand it, this was a list prepared by Barclays of the items of securities that they would not want -- would not accept as collateral in support of the September

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18 repo?

MR. SHAW: Objection to form.

A. That's my understanding of what it was.

Q. And is this the list you then used to review the collateral that you were posting to make sure it wasn't on this list?

A. We used the list that looked like this. I don't know if this was the final list, but a list that looked like this, yes, was used.

Q. At the subject line of your e-mail, it says, "Excluded mortgage asset files." You see that?

A. Uh-huh.

Q. Are these Cusips on this list primarily mortgaged -- mortgage-related securities?

A. They were primarily mortgage and asset-backed-related securities on this list.

Q. So why were they to be excluded as collateral?

MR. SHAW: Objection to form.

A. I don't know. I was given a list to use in the selection criteria and was told to

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exclude them, so I don't know.

Q. Do you have any understanding of why they might be excluded?

A. No.

Q. Now, when these are excluded, is it correct to say that these securities had been posted as collateral to the Fed but were not allowed to be posted as collateral to the September 18 repo?

A. I never cross-referenced the two, so I don't know for certain.

Q. Do you know if the Fed in its financing excluded mortgage-backed assets like this as being eligible collateral?

A. The Fed excluded certain classes and ratings of mortgages, but in general, the Fed would accept mortgage collateral.

Q. Okay. So is it correct to say that this list, this list reflects a change in the type of collateral that Barclays would accept in connection with the September 18 repo from the collateral that had been posted to the Fed financing?

A. Well, without knowing whether these

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2 specific assets were pledged to the Fed or not,
3 I wouldn't know that, whether it represented a
4 change.

5 Q. Okay. What do you think?

6 MR. SHAW: Objection. Calls for
7 speculation.

8 A. I don't know, honestly.

9 Q. Okay. Do you recall any
10 discussions -- is it possible that these
11 mortgage-related securities were just considered
12 too risky by Barclays to be accepted as
13 collateral?

14 MR. SHAW: Objection. Calls for
15 speculation.

16 A. It would be a logical conclusion. I
17 don't know why, but it would be a logical
18 conclusion.

19 Q. Okay. Do you recall any other
20 discussions during the week of September 15th
21 about what types of collateral Barclays would
22 not accept in support of the September 18 repo?

23 A. I don't know.

24 Q. Do you have any understanding about
25 whether there were any differences in the types

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2 of collateral that could be posted to the Fed
3 financing as opposed to the collateral that
4 could be used to support the September 18 repo?

5 A. No.

6 Q. Do you have any understanding about
7 whether the collateral that was posted to
8 support the Fed repo was in any way riskier or
9 less risky than the collateral that was posted
10 toward the September 18 repo?

11 A. Well, I don't typically determine
12 risk, so I wouldn't really necessarily be able
13 to determine whether one set of assets is
14 riskier than another, to tell you the truth,
15 so...

16 Q. Okay.

17 (Exhibit 144B, a document bearing
18 Bates Nos. 10297377 through 10300510, marked
19 for identification, as of this date.)

20 Q. Mr. Hraska, I'm handing you a copy of
21 a document marked as Exhibit 144B. I have very
22 few questions about the document, but
23 essentially it involves just getting an
24 understanding of what this database includes.

25 So if you might take a minute to

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2 review it, I'll ask you a question or two.

3 A. Sure.

4 (Document review.)

5 Q. Have you had a chance to look at it?

6 A. I have.

7 Q. You'll see, Mr. Hraska, on the front
8 there's an attachment with the title
9 "BAR-PDCF-074.XLS." Does that -- well, can you
10 explain to me the convention for titling
11 databases like this? What is that meant to
12 encompass, if you know?

13 MR. SHAW: Objection. Assumes facts
14 not in evidence. Calls for speculation.

15 Q. Let me withdraw that question. Let's
16 start again.

17 Have you ever seen this document
18 before?

19 A. I have, yes.

20 Q. And what is this?

21 A. This is an e-mail that I had -- that I
22 had forwarded on to Peter Hadingham, who was on
23 the trading desk, the financing trading desk.

24 Q. And what is this attachment?

25 A. This is a file of collateral that was

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2 sourced from clearance box O74 and had been -- I
3 believe it had been previously deposited to the
4 Fed under the PDCF program.

5 Q. Okay. And was this collateral
6 eventually transferred or posted as collateral
7 for the September 18 repo?

8 A. This was collateral that we had --
9 that we had contemplated posting. I can't
10 verify that all of this collateral was posted,
11 but the intention was to take this collateral
12 and post it to Barclays.

13 Q. Okay. If you look on page 2 of the
14 document, you'll see three headings under
15 columns E, F and G. I just wanted to get your
16 understanding of what they mean.

17 The first one is entitled "Market
18 Price Factored." Can you explain to me what
19 that means?

20 A. I don't specifically know what it
21 means on this file. I know what "price
22 factoring" means, but it doesn't seem, from the
23 data in this file, doesn't seem to mean what
24 price factoring is.

25 Q. What is it typically?

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2 the way I define "paydown," but you can see that
3 it's a lesser value. So, you know, my
4 impression of what this was was the -- was
5 the -- was the cash that was being extended on
6 this as a result of the program from the night
7 before, but I can't be sure.

8 **Q. I'm not sure I understood what you**
9 **meant. Are you talking about the program from**
10 **the night before meaning the Fed program that**
11 **had rolled over another night?**

12 A. The Fed program that was on for the
13 night of the 17th.

14 **Q. That is Wednesday night?**

15 A. That's Wednesday night, yes.

16 **Q. Okay. So I'm not sure I understood**
17 **your explanation. What is paydown amount?**

18 A. Paydown amount would be the -- paydown
19 amount would be the proceeds that would be -- I
20 guess, simply put, it would be the value that
21 was given to the securities after haircut,
22 probably the simplest way to put it. So this
23 amount would -- in other words, this amount of
24 securities, 49 million, would support a loan in
25 the value of 43,457,000.

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2 **Q. Okay. And then if you see the next**
3 **column, it talks about "Anticipated Prefunding**
4 **Dollar Amount." Do you see that?**

5 A. Yes.

6 **Q. And now -- and that totals to 44.2**
7 **billion, you see that?**

8 A. Yes.

9 **Q. What does that column signify?**

10 MR. SHAW: Objection to form.

11 A. I don't know. Actually, I questioned
12 that at the time. My impression was that was
13 the amount that was going to be wired to Chase
14 to release the collateral, but it turned out not
15 to be the case and I was never explained as to
16 why that was not the case. Because, as you
17 know, it turned out to be 45 billion, so I don't
18 know.

19 **Q. So you, just so I understand what you**
20 **are saying, you, at the time, you thought 44.2**
21 **billion would be the amount that had to be wired**
22 **to Chase to release the Fed collateral that was**
23 **then going to be transferred to the September**
24 **18th repo?**

25 A. Being that this was provided by Chase,

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2 and these were their requirements to release the
3 collateral, the way I read this was that that
4 was the case, and having discussions with Chase,
5 I found out that, no, that was not the case,
6 that they were expecting an amount of 45
7 billion.

8 **Q. And did they ever explain to you why**
9 **the difference?**

10 A. No.

11 **Q. Did they ever explain to you what this**
12 **column was to signify in their view?**

13 A. No.

14 **Q. Okay.**

15 MR. SHAW: We've been going over an
16 hour, Bill, if we could take a short break.

17 MR. HINE: Sure.

18 (Recess; Time Noted: 2:28 P.M.)

19 (Time Noted: 2:39 P.M.)

20 BY MR. HINE:

21 **Q. Mr. Hraska, could you pull out the**
22 **exhibit we were talking about before we broke,**
23 **which I think was Exhibit 18.**

24 MR. SHAW: 60B?

25 **Q. I'm sorry, 60B.**

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2 **Because you might want to refer to**
3 **that when I hand you the next exhibit. So I**
4 **don't have any questions on that specifically,**
5 **but let me hand you another document that's been**
6 **marked as Exhibit 125. If you could take a**
7 **moment to review that before I ask you a**
8 **question, I would appreciate it.**

9 (Document review.)

10 A. Okay.

11 **Q. Have you had a moment to look at it?**

12 A. Yes.

13 **Q. Mr. Hraska, turning to Exhibit 125,**
14 **have you ever seen in document before?**

15 A. Yes.

16 **Q. What is this document?**

17 A. This is a document that was prepared
18 by Nancy, who works for me. It was how we had
19 broken up the -- how we had broken up what we
20 called the tri-party shells or how we had
21 assembled the baskets of collateral that we were
22 going to be pledging over to Barclays.

23 **Q. Can you explain to me what you mean by**
24 **that, tri-party shells?**

25 A. In a tri-party transaction, you are --

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you're lending securities based off of, as we talked about, the schedules and typically according to asset classes and requirements. So you typically book the money amount that's going to be associated with a generic bucket of securities that will fit these criterias, and that loan amount or that dollar amount is -- what you book is called typically a shell. By some firms, it's known as a loan amount.

So it's sort of the dollar value that you're going to associate a various basket of securities to.

Q. Okay. And is that what's called the booking amount?

A. These -- the booking amounts would be the dollar value of the loan, yes.

Q. And the baskets of securities, are those listed on the left-hand column coming from various Fed programs; is that right?

A. That's correct, yes.

Q. And could you just walk me through the different columns on this chart and explain to me what each column signifies? We can start with the column that totals down to \$47.5

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billion. Do you see that column?

A. Yes.

Q. Do you know what that column is supposed to represent?

A. The total market value of the securities.

Q. And these are the securities that have been posted to the Fed financing programs?

A. These were the securities that we had that we were anticipating pledging over to the Barclays transaction for the 18th.

Q. So this document that we had previously talked about how \$8 billion never made it, we had long discussions about that, but this chart is prepared prior to that?

A. This was prepared prior to that.

Q. So this is what you are anticipating being able to take from the Fed programs over to BONY; is that right?

A. Actually, looking at the date of this, this -- this was prepared later that evening. So this must have been where we were at a particular point in time, or where we -- what we had booked at a particular point in time, not

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necessarily what was delivered yet at that particular point in time.

Q. I guess, could you explain that to me in terms of the different columns?

A. These columns represent items that were actually booked on our systems. That trade, as we talked about, there were different collateral classes and substitutions that happened all day based on deliveries, available in the box, that kind of thing.

So we were using this spreadsheet to try to capture all of the collateral that we were looking and the market value that we were booking, so these were the amounts that were being booked. From the time stamp, I can see it was 7 o'clock, so it was -- we weren't done until much later in the evening, so it was a -- this is an interim file, basically. It's not the beginning file. And it's not at the end of the day. It's not the ending file either. It was an interim step around 7 o'clock.

Q. So if I found a file entitled BarCapSummary.xls, later than this, I would eventually get to a final file?

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MR. SHAW: Objection to form.

A. There is a final file, yes.

Q. Okay. And it would have the same title as this file?

MR. SHAW: Objection to form.

A. I don't know whether it would have the same title.

Q. Okay. Would Ms. Denig probably know that?

MR. SHAW: Objection to form.

A. She would know whether she prepared a file. Again, whether it was the final file she may not necessarily know.

Q. Was she charged with monitoring this process?

A. Yes.

Q. Okay. So is she the originator of this chart?

A. She is the originator of, yes, this format.

Q. This chart is a snapshot at some point during that day of this transfer?

A. Yes, that's correct.

Q. Okay. Now, just so I understand the

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different columns, the first column that totals to \$47.5 billion, approximately, is the market value of the securities that had been posted to the Fed programs?

A. That's what I believe that to be, yes.

Q. Okay. What is the next column, which starts with \$7.1 billion, what is that column?

A. To be honest, I actually don't recall what that specific amount is. I can venture a guess, but I would rather not.

Q. Venture a guess, if you don't mind.

MR. SHAW: Calls for speculation.

A. My guess is it's the par amount of the -- of the securities.

Q. And then the next column totals to \$44.2 billion, you see that?

A. Yes.

Q. And do you know what that column represents?

A. That would have represented the principal proceeds of the repo or the amount after haircut.

Q. Okay. And what does the last column represent, do you know?

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A. No, unfortunately, I actually don't know what the next column is.

Q. The \$44.2 billion that you just testified about, does that relate in any way to the \$44.2 billion on the previous exhibit?

MR. SHAW: Objection to form.

A. It was what we believed we need to fund over to Chase as per the column of this previous spreadsheet. So in our initial bookings that's where we were trying to get collateral that ultimately totaled the amount equal to that amount.

Q. And later you learned that it had to be 45 billion?

A. That's correct.

Q. Mr. Hraska, in the interest of trying to save you looking through another chart, I see one spreadsheet that's entitled Depot Analysis. Do you recall what that is?

A. No, not off the top of my head.

Q. Let me show it to you then.

(Exhibit 145B, a document bearing Bates Nos. 10328099 through 10319396, marked for identification, as of this date.)

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Q. Mr. Hraska, I'm handing you a documents marked as Exhibit 145B.

A. Okay.

Q. And as promised, it's -- it has the attachment entitled Depot Analysis. Do you see that?

A. I do, yes.

Q. If you wouldn't mind taking a moment to take a look at this document.

Just for the record, it's an e-mail dated September 21, 2008, from Mr. Hraska to Monty Forrest and Mark Lee.

(Document review.)

A. Okay.

Q. Have you had a chance to look at it?

A. I have, yes.

Q. Have you ever seen this document before?

A. Yes.

Q. Will you tell me what it is?

A. This is a document that -- the e-mail's a document that I created with an attachment that I worked on with Nancy Denig and Bill Parrinello over the weekend of the 20th and

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21st. It was -- it was our analysis of available unencumbered assets that we had referenced earlier in the testimony.

Q. Okay. Is this -- okay. You testified I think earlier about an effort to locate unencumbered assets, and this is an analysis you did in that regard?

A. Yes.

Q. Is this the list of unencumbered assets that you came up with?

A. This is a list. On the course of that weekend, there was I would say over a dozen lists that were as we went through it and we revised it and things like that. I mean, it was -- this list was created or sent at 7:36 in the morning. I'm not sure that this is the final list, but this was a later version of the list, yes.

Q. Why is it called Depot Analysis?

A. A depot is another name for a clearance box, depository, depot. It's just an industry slang term. The 9/19 date was referencing the fact that this was the close of business 9/19.

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Q. When I see the title, it says "9/19/2008.5." Does this suggest that it's a version 5 of this analysis?

A. I would say yes.

Q. And would it be your expectation that if I looked through the files, I should find later versions of this analysis?

A. I don't know for certain. I know that we worked all through Sunday, so it's a -- there's a good chance there may be a different file later, but ...

Q. Okay. Does this analysis ultimately identify the \$1.4 billion worth of securities that we talked about earlier that were transferred to Barclays?

A. No.

Q. Okay. What is the end product of this analysis? I'm trying to understand how this analysis fits into the testimony you gave earlier about the 1.4 billion and the 800 Cusips. So I'm just trying to understand what is the end product of this analysis?

A. The end product of this analysis is that this was sent over as available collateral

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to be transferred. I can't confirm a hundred percent that the assets that are in the 1.4 list are all on this list.

Q. Okay. I think you testified earlier that you sent a list over of unencumbered assets. Am I correct to say that \$1.4 billion worth of those assets on that list eventually did make it to Barclays, right?

A. I sent over a list of unencumbered assets and 1.4 billion of assets made it to Barclays. I can't be sure that it's the same 1.4 that was on the final list that I sent over.

Q. Okay. And is the list that you sent over entitled Depot Analysis or was that a separate list?

A. I don't recall what the final name was.

Q. Okay. What is the analysis part of it?

A. The analysis was trying to determine whether the securities were available or unencumbered.

Q. Did the analysis entail valuing those securities at all?

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A. No.

Q. If you look on page 2 of this document?

A. Uh-huh.

Q. I just wonder if you can explain to me the last two columns -- I'm sorry.

A. Page 2 or a different page?

Q. The first page of the chart.

A. This is what I've got. Summary, that page? Or the spreadsheet first page?

MR. SHAW: Use the Bates numbers.

Q. Let me see if I'm referring to the correct document. I have a misprint in my document.

Page 3 of the chart.

A. Okay.

Q. You see column F says "Firm DTC MV"?

A. Yes.

Q. What does that column represent?

A. That represents a market value which was held in GFS, which is the system we referenced earlier.

Q. Okay.

A. So that would have been the market

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value that GFS had assigned to that position.

Q. Why does it say "DTC"?

A. GFS was a database storage of multiple pricing sources, and in addition to Lehman's marks, in some instances we -- GFS also took in how the depository knew the value of the collateral to be.

Q. Okay. And the previous column says "Firm DTC POS," you see that?

A. Yes.

Q. What does that column represent?

A. Those represent the firm positions.

Q. "Positions" meaning numbers of securities or dollar value?

A. Numbers of securities.

Q. Okay. Now, if you turn to the second page of the chart, you'll see a chart which totals \$1.19 billion, you see that?

A. The second page of the document, not of the chart?

Q. Yes, I'm sorry. You're right.

Is 1.19 billion the value of the list of unencumbered assets that you sent over to Barclays?

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A. It was the market value that GFS assigned at the time of the creation of this particular file.

Q. Okay. But you don't know if this is the final list, correct?

A. I don't know.

Q. At this particular time, GFS assigned that value to this list of securities; is that right?

A. That's correct.

Q. Mr. Hraska, I'm handing you a copy of a document previously marked as Exhibit 75B, which is an e-mail stream dated September 20. Please take a moment to take a look at it.

(Document review.)

A. Okay.

Q. Have you had a chance to look at it?

A. I have.

Q. Have you ever seen this document before?

A. Yes, I have.

Q. What is this?

A. This is an e-mail that I was a

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recipient on. It was one of the -- one of the status updates when we were trying to identify unencumbered collateral in various sources.

Q. If you look -- so am I correct this is in connection with your efforts to identify unencumbered assets that could be transferred to Barclays?

A. Yes.

Q. If you look at the bottom of the first page, it says, "Goal is 1.9 billion in unencumbered." You see that?

A. I do.

Q. Was that the goal you folks were shooting for at the time?

A. That was the goal as it was described to me, yes.

Q. Who described it to you like that?

A. Monty Forrest.

Q. Okay. And where did that goal come from?

A. I don't know.

Q. I thought I heard you say previously that the effort was simply to find as many unencumbered assets as possible; is that right?

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A. Yes, that's correct.

Q. How does the \$1.9 billion goal fit in with that? It seems like a very specific target to be shooting for.

A. I don't know where specifically that number came from. In my mind, I was looking for as many unencumbered collateral pieces that I could because I still was unsure of the status of that repo transaction that we talked about, the September 18 repo, where we pledged the 7 billion in cash.

So in my mind I needed to come up with assets that would continue to be able to substitute that collateral versus cash, and at that point, I was still unsure whether or not anything further was going to happen on that transaction or not. So I was looking for an unencumbered collateral. You know, they gave us this goal of 1.9 billion, but, you know, in my line of work, it's, you know, to the extent that you are given a task to find an unencumbered collateral, it's usually best to find the entire population. And to the extent somebody gives you 1.9, you say, great, I've done it. If it

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turns to 2.9, you have to do it again.

Q. So was the search for unencumbered collateral an effort to find replacement collateral for the cash?

MR. SHAW: Objection to form.

A. I was looking to find unencumbered collateral. You know, the firm may have had its own specific goal of the 1.9, in which I was trying to ascertain at least 1.9, because that's what they were looking for. But I was specifically not tied to 1.9 as, you know, the only thing that I was going to find. I was looking to find as many unencumbered collateral as I could.

Q. I guess I want to understand what -- I thought you had previously said that you found \$1 billion in unencumbered collateral that was then posted towards the \$7 billion in cash and you had hoped to receive the \$7 billion or some of that cash back, right?

A. That's correct.

Q. Now, was that effort to find unencumbered collateral different from this goal of 1.9 billion?

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A. I've subsequently learned that this 1.9 was different than the effort to search for unencumbered collateral on this weekend. At the time of that weekend, you know, I was again searching for unencumbered collateral in its entirety. So, in my mind, you know, we still needed to do a substitution on that cash event.

Q. Okay.

A. And until I was told otherwise, I was going to try to find collateral that potentially fit the bill for that.

Q. Okay. What did you learn subsequently that was different than what you understood at the time?

A. Well, you know, subsequently, I was made aware of, you know, Schedule B, which had some, you know, 1.9 to 2 billion dollars worth of, you know, collateral on it. But at the time, I wasn't aware of that.

Q. Okay. So now it's your understanding that the \$1.9 billion goal was in connection with preparing the Schedule B?

MR. SHAW: Objection.

Mischaracterizes prior testimony.

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Q. Okay. And did that 800 million eventually make its way to Barclays?

MR. SHAW: Objection. Foundation.

A. Stating that it's at BONY would have indicated that fact, because we didn't have -- Lehman didn't have a relationship with BONY, so...

Q. Okay. Then further down, number 2, you see it references 746 million in O74, see that?

A. Yes.

Q. And what does that reflect?

A. That's referring to, at the time of this, it was believed that there was 746 million in market value in securities unencumbered in O74.

Q. And did that collateral make its way to Barclays?

MR. SHAW: Objection to form.

A. I don't know whether that 746 reference here made it to Barclays or not.

Q. Do you know whether the collateral in the O74 account was -- made its way to Barclays?

A. Some collateral in O74 made it to

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A. I'm sorry, could you repeat the question?

Q. Is it now your understanding, notwithstanding what you understood at the time, is it now your understanding that the \$1.9 billion goal was, with respect to the search for unencumbered collateral, was to prepare securities that would go to Barclays under Schedule B?

MR. SHAW: Objection to form.

A. Could you read back to me -- (Record read.)

A. Yes.

Q. Okay. Now, further up on this e-mail we see a report apparently by Mr. Forrest of the latest status, or some form of status report. Can we just go through those items and tell me what you recall about those items?

It says 800 million at BONY. Do you see that?

A. Yes.

Q. And what's that referring to?

A. Honestly, I don't recall what that 800 million was.

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Barclays, yes.

Q. Some did not?

A. That's correct.

Q. How much did not?

MR. SHAW: Asked and answered.

A. There's a portion in O74 that's still outstanding, hasn't made it to Barclays.

Q. Do you know how much?

MR. SHAW: Asked and answered.

A. I believe that amount to be somewhere in the neighborhood of 6 to 7 hundred million.

Q. Is that the 800 Cusips that you mentioned earlier?

A. No, as I had mentioned earlier, there was the original list which had the discrepancy of 800 Cusips, and there was a separate analysis which produced different collateral that was available, potentially, to be transferred.

Q. Okay. And that's the 6 or 7 hundred million that you're discussing that you just mentioned did not make it to Barclays?

A. That's correct.

Q. Then we see in item number 3 a reference to 435 million in Canada, do you see

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that?

A. Yes.

Q. What is that referencing?

A. Unencumbered market value in our Canadian depository.

Q. And did those securities make it to Barclays?

A. No.

Q. Where are they now? Still in that same depository?

A. I don't know for certain, but it would be my assumption, yes.

Q. Does Barclays think they're entitled to that collateral?

MR. SHAW: Objection to form. Calls for speculation.

A. I don't know.

Q. And you see the next item, number 4, 300 million in mortgages in 636. Do you see that?

A. Yes.

Q. What is that referring to?

A. Market value of securities held in our depository at DTC Number 636.

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Q. And did that collateral make it to Barclays?

A. I don't know how much of that or if any of that collateral made it to Barclays.

Q. Okay. Then the next line says a total -- this totals to 2.18 billion. You see that?

A. I do, yes.

Q. Does that mean you made your goal of 1.9 billion?

A. That would indicate that we had enough collateral to satisfy the collateral requirement, yes.

Q. Do you recall any discussions about whether you made the goal of 1.9 billion?

A. No.

Q. Did you think at the time that you had achieved the goal of 1.9 billion?

A. Based on this mail, I thought that I achieved what was asked from me by Monty, yes.

Q. Did anyone call you up and say, congratulations, you made the goal of 1.9 billion?

A. No.

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Q. So how did it end? Did you think you had to continue searching?

A. This was pretty early on in the weekend. It was only Saturday at 8:30 P.M. So, you know, this continued to go on because there were -- I don't remember what the nature of the circumstances are, but I remember we continued to search for collateral for pretty much the whole rest of the weekend.

Q. So the 1.9 billion goal was put aside and just kept searching?

A. I don't believe that the 1.9 billion goal was set aside. It was just a matter of there might have been some either additional problems in the collateral that we identified or we were doing verification exercises like looking at securities in depositories and accounts on our stock record to make sure that everything tied out. And so throughout some of those additional reconciliations, some of the previous things that had been identified had to be revised.

Q. Okay. I wanted to ask you one follow-up question about I think we previously

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were discussing the list of excluded assets. Do you recall that testimony?

A. Yes.

Q. That was a list of assets that Barclays would not accept as collateral for the September 18th repo, right?

A. Yes.

Q. And one of the assets that they would not accept are the racer notes that you mentioned, right?

A. That's correct.

Q. Do you know the value of those racer notes at the time?

A. Approximately 5 billion.

Q. 5 billion?

A. Yes.

Q. Okay. Do you know the value of the pool of excluded assets that had been posted to the Fed financing but Barclays would not accept in the September 18 repo?

A. No.

Q. Did you make an effort to look through the collateral that had been posted to the Fed and exclude out those items that Barclays would

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not accept as collateral for the 9/18 repo?

A. Yes, we did look-ups on the securities we were going to pledge to make sure that they were not on that excluded list.

Q. Okay. And did you have any sense of the value of the ones that were excluded because of that review?

A. No. Once they were excluded, we didn't keep track of what was excluded. It was, in our mind, there was no need to because we weren't going to pledge it.

Q. Do you recall if it was a substantial amount of securities?

A. Well, we didn't do it as one exercise. As we went and found baskets of securities in groups, we might have found exceptions in that exercise with multiple iterations. So I don't honestly recall how many were on that list.
(Exhibit 146B, a document bearing Bates Nos. BCI-EX-(S)-00014389 through 14393 with attachment, marked for identification, as of this date.)

Q. Mr. Hraska, I've handed you a copy of a document marked as Exhibit 146B. It is

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Bates-stamped BCI-EX-(S)00014389 through 14393, and then there are a series of attachments which don't have Bates stamps.

A. Okay.

Q. Have you had a chance to take a look at the document?

A. Sure.

(Document review.)

A. Okay.

Q. Have you had a chance to look at it?

A. I have, yes.

Q. Have you ever seen this document before?

A. Yes, I have.

Q. Can you tell me what it is?

A. This was an e-mail sent by Robert Azerad who's on Paolo Tonucci's team in the Treasury Department. He had been given a file that Barclays had worked on comparing it to -- comparing what they believed to be what Lehman knew to deliver versus what Barclays had known was delivered, and there were a few discrepancies in the Fed items versus a few hundred discrepancies in the DTC bucket of

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collateral. So he asked us to look into it and try to reconcile through why there was these particular discrepancies.

Q. And were you able to do that?

A. We were, yes.

Q. Why were there such discrepancies?

A. I'm not sure why there were discrepancies with the information provided. We -- we verified that the information that we had originally provided was correct, so I don't know the sourcing of the file that -- or of the information that they relied on when they created this.

Q. Now, is this -- I take it this e-mail is sent in connection with your reconciliation effort that you talked about earlier?

A. We had -- we had done a reconciliation -- well, there were, to be clear, there were multiple reconciliation efforts that were done after this transaction, but my group had performed a reconciliation effort with -- with the Bank of New York and the Operations folks at Barclays, you know, prior to receiving this and we were -- we were reconciled with

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respect to the number of securities and the Cusip identifiers, as we had talked a little bit earlier about.

Q. And you said that your records tied in with Barclays records on that score, right?

A. That's correct, yes.

Q. And so why did this come up later?

A. I honestly don't know.

Q. Are these from a different set of records?

A. My presumption is that, yes, and they were, in my opinion, incomplete records because they were missing securities.

Q. So the Barclays records which appear to show a thousand-some-odd Cusips missing were incomplete?

A. I don't think there was a thousand missing.

MR. SHAW: Objection.

Mischaracterizes the document.

Q. Let's read through this e-mail here for a second. It says you'll see in the larger -- largest paragraph on the first page it says, "For DTC settled securities, there are

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2 that we just discussed.

3 **Q. Okay. If I look on the front page of**
4 **the e-mail, the first e-mail, it references**
5 **looks like a file entitled "Barclays Financing**
6 **Collateral Lists, BARC Ops," is that this**
7 **database?**

8 A. I don't know.

9 **Q. Okay. How about the last database**
10 **behind the final blue sheet, do you know what**
11 **that document is?**

12 A. Again, I'd have to speculate that it's
13 the supporting documentation to the other
14 summary totals.

15 **Q. Okay. Do you know which one -- I see**
16 **on the opening e-mail there's a document**
17 **entitled "Corrected Thursday Transfers to**
18 **Barclays. BONY Agreed." You see that?**

19 A. I do, yes.

20 **Q. Is that one of these two lengthy**
21 **databases at the end, do you know?**

22 A. I don't know.

23 MR. HINE: Okay. I think, Mr. Hraska,
24 I have no further questions for you. Thank
25 you very much for your time. I think some

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2 of my colleagues might.

3 (Discussion off the record.)

4 (Recess; Time Noted: 3:26 P.M.)

5 (Time Noted: 3:31 P.M.)

6 EXAMINATION BY
7 MR. OXFORD:

8 **Q. Mr. Hraska, we met off the record, but**
9 **let me introduce myself on the record. I'm Neil**
10 **Oxford and I'm with Hughes, Hubbard & Reed. We**
11 **represent the SIPA Trustee.**

12 A. Okay.

13 **Q. You testified that sometime after the**
14 **closing of the transaction you learned that**
15 **Barclays purchased the unencumbered assets of**
16 **LBI's clearance boxes, correct?**

17 A. Can you specify, when you say "the
18 closing of the transaction," which transaction
19 you're referring to?

20 **Q. I mean the closing of the sale of**
21 **LBI's assets to Barclays on the 22nd of**
22 **September?**

23 A. Okay. So I'm sorry, can I ask you to
24 repeat the whole question based on that?
25 (Record read.)

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2 A. That's correct.

3 **Q. From whom did you learn that?**

4 A. Paolo Tonucci.

5 **Q. When did Mr. Tonucci advise you of**
6 **this?**

7 A. I don't recall a specific date.

8 **Q. Do you recall whether it was shortly**
9 **after the closing on the 22nd of September?**

10 MR. SHAW: What do you mean by
11 "shortly after"?

12 **Q. Well, was it within a week, within a**
13 **month of that closing?**

14 A. It was within a month, yes.

15 **Q. Can you tell me anything else you**
16 **remember about that conversation with Mr.**
17 **Tonucci?**

18 A. I remember that he had said that, as a
19 result of this transaction, we were to search
20 for all of the assets that were considered
21 unencumbered in the Lehman boxes.

22 **Q. From whom did you get your**
23 **instructions over the weekend of the 20th and**
24 **21st to search for unencumbered assets? Was**
25 **that Mr. Forrest?**

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2 A. My direct instructions came from Mr.
3 Forrest as my supervisor, yes.

4 **Q. Did you talk to anybody else about**
5 **what your instructions were that weekend with**
6 **respect to identifying unencumbered assets in**
7 **LBI's clearance boxes?**

8 A. With respect to identifying the assets
9 and instructions, no, those all came from Mr.
10 Forrest.

11 **Q. The 1.4 billion, approximately, in**
12 **assets that you believe were transferred from**
13 **LBI's clearance boxes, do you believe that they**
14 **include the assets that were transferred on the**
15 **18th of September?**

16 A. No.

17 **Q. Why do you say that?**

18 A. Because, from my previous testimony,
19 all the assets that were transferred on the 18th
20 were reconciled through, and the assets that we
21 delivered from the 18th onward -- like I have a
22 record of all the assets that were transferred
23 beyond the 18th, and so when I surmise that it
24 was 1.4 billion, it was based off of the assets
25 that were transferred subsequent to the 18th

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2 from my records.

3 Q. Does the 1.4 billion figure you have
4 testified about include assets that were
5 transferred on the 19th of September?

6 A. Yes, it does.

7 Q. And what's the approximate value, to
8 your knowledge, of the assets that were
9 transferred on the 19th?

10 A. A little bit over a billion. I
11 believe it's like 1.034 or 35 billion.

12 Q. You said that you looked across stock
13 records the weekend of the 20th and 21st for
14 assets over which there was no lien; is that
15 correct?

16 A. That's correct.

17 Q. Is it fair to conclude that the
18 results of your search for unencumbered assets
19 or assets with no lien was the results were
20 imperfect?

21 A. That's fair to say, yes.

22 Q. And it's fair to say because of the
23 800 or so Cusips that you testified earlier were
24 identified to you as actually encumbered or
25 other than unencumbered, correct?

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2 A. That's correct, yes.

3 Q. Can you tell me how you went about
4 identifying --

5 A. Can I just clarify something?

6 Q. Of course.

7 A. They were identified as -- on the
8 system as not movable or encumbered, but we
9 needed to do some more investigation because we
10 didn't know whether they truly needed to remain
11 encumbered or whether they were erroneously
12 encumbered.

13 Q. And did you do that investigation?

14 A. I didn't personally do that
15 investigation. There was -- there was a
16 reconciliation effort that took place that
17 reconciles stock record breaks which then later
18 helped unencumber some of that collateral.

19 Q. So, as I understand this, you were
20 given a list that you called an exception list;
21 is that correct?

22 A. That's correct, yes.

23 Q. Who gave you that exception list?

24 A. I don't recall the person. I remember
25 it came from Finance.

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2 Q. And Finance is?

3 A. Finance is like product control.
4 Finance -- those are the names of the
5 organization, Product Control Finance. I
6 believe it's managed now by Martin Kelly and his
7 team here at Barclays.

8 Q. And can you tell me what an exception
9 list is, please?

10 A. The exception list as defined by what
11 we're discussing was the Schedule B list
12 versus -- the official Schedule B list versus
13 the actual collateral delivered to Barclays
14 subsequent to the 18th.

15 Q. And at some point did you get a list
16 of 800 Cusips that had not been delivered? Are
17 we talking about the same list?

18 A. That's the same list, yes.

19 Q. And a reconciliation effort was then
20 undertaken; is that correct?

21 A. There was a reconciliation effort --
22 well, there was two things that were done.
23 There was a verification to see whether or not
24 those, in fact, those 800 were or were not
25 delivered. We verified that those 800 were not

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2 delivered, and then there was a reconciliation
3 just in general to resolve stock breaks at the
4 firm which was done.

5 Q. Of the 800 Cusips that you have
6 verified or your team had verified were not
7 delivered, did you determine whether or not any
8 of those securities were in fact unencumbered?

9 A. I didn't determine that, no.

10 Q. Do you know if such a determination
11 was made?

12 A. I don't, no.

13 Q. When were you given this exception
14 list?

15 A. I don't recall, honestly.

16 Q. Can you give me any idea as the
17 whether it was 2008 or 2009?

18 A. Honestly, no.

19 Q. Was it around the same time, Mr.
20 Hraska, that you were asked to go and find
21 additional unencumbered assets in Lehman's
22 clearance boxes?

23 A. Yes, but I was asked that multiple
24 times at multiple stages. We talked about it
25 over the weekend and then there was times where

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2 much further beyond that. So when you're
3 referring to -- at what period of time were you
4 referring to?

5 Q. The period of time that you can't
6 remember where you were given the exception
7 list.

8 A. Yes, so around that time, yes.

9 Q. Do you recall who asked you, at around
10 the time you were given the exception list, who
11 asked you to go and find additional unencumbered
12 assets in Lehman's clearance boxes?

13 A. At that time, it would have been
14 Robert Azerad.

15 Q. Did Mr. Azerad tell you why he wanted
16 you to go and find these additional unencumbered
17 assets?

18 A. It was in connection with the -- with
19 the Asset Purchase Agreement between Barclays
20 and Lehman.

21 Q. Did he give you any more detail than
22 that?

23 A. No.

24 Q. I think you testified that you went on
25 to identify an additional amount of unencumbered

1 HIGHLY CONFIDENTIAL - J. HRASKA
2 assets in response to Mr. Azerad's request; is
3 that correct?

4 A. Yes, that's correct.

5 Q. And the figure I have written down is
6 approximately 6 to 7 hundred million dollars of
7 unencumbered assets that you previously had not
8 identified; is that correct?

9 A. That's correct.

10 Q. Can you tell me how you went about,
11 over the weekend of the 20th and 21st of
12 September, identifying unencumbered assets?

13 A. Sure. We -- we relied primarily on
14 GFS, which we talked about a little bit earlier,
15 which is a system that was a database aggregator
16 that took information from multiple mainframes
17 which represented the books and records of
18 Lehman Brothers.

19 We then took that data and we looked
20 for primarily assets which were held in firm
21 trading accounts, and we compared the firm asset
22 side versus the balances which were held in the
23 depositories to make sure that there was enough
24 assets in the depositories to support that
25 inventory balance, and if there was enough, we

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2 deemed that be to be unencumbered assets.

3 Q. Did you take any steps to determine
4 whether or not the assets you identified could
5 have been owned by Lehman's customers?

6 A. The accounts we searched in were firm
7 trading accounts and stock loan borrow accounts,
8 and in either of these accounts it would have
9 been deemed as inventory because it as in a firm
10 inventory trading ledger, or if it was in a
11 stock loan account, it would have been as a
12 result of having rehypothecation rights. We
13 would have been allowed to borrow it so we would
14 have used that as a source for collateral.

15 Q. Is it possible that, taking the
16 hypothetical example of 100 shares of IBM stock
17 that's sitting in the DTC box at O74, is it
18 possible that there could be a claim on that,
19 those 100 shares by both a Lehman customer and
20 by Lehman?

21 MR. SHAW: Objection, form.

22 Q. Do you understand my question?

23 A. Could you repeat it, please?

24 Q. Yes. If there are -- if there's a
25 particular Cusip or set of Cusips sitting in

1 HIGHLY CONFIDENTIAL - J. HRASKA
2 Lehman's DTC box O74 --

3 A. Okay.

4 Q. -- is it possible that there could be
5 a claim on those Cusips by both Lehman as a firm
6 and by Lehman's customers?

7 MR. SHAW: Objection to form.

8 A. In your first question, you specified
9 a quantity and you specified whether each of
10 those could have lay to the same claim for that
11 quantity.

12 Is that still your question, or is
13 your question now in general could -- could
14 customers and firm have claim to the same Cusip
15 number, meaning the identifier, not the actual
16 number of shares?

17 Q. The actual number of shares. I meant
18 to reask my first question.

19 A. Okay. So if the stock record is
20 reconciled, you would not have situation where
21 you would have both the firm and customer having
22 a claim to the same number of shares at the
23 depository.

24 Q. Were Lehman stock records reconciled
25 fully over the weekend of September 20 and 21?

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A. No, which is what led to the inconsistencies you referenced on my set of files that I first produced.

Q. Those are those 800 Cusips that were not delivered, many of which were in fact determined ultimately to be encumbered, not unencumbered securities, correct?

A. Yes.

Q. Why were Lehman's stock records not fully reconciled over that weekend?

A. Well, as I'm sure you're aware, the financial markets were going through down -- quite of a meltdown in that period and, more specifically, Lehman Brothers. There was an inordinate amount of activity going through our clearance boxes, through our front ends and back ends processing systems.

In addition to that, there were relationship troubles with JPMorgan Chase, and as a result of that, there was information that was typically received, like file transfers that represent statement balances and things like that, that we would normally expect to receive from your custodians which were not sent to

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Lehman Brothers on either the night of the 19th or during bat cycles on the 20th. So it was very difficult to do a reconciliation without a complete set of data.

Q. Did you ever get to have a complete set of data such that you could make that reconciliation?

A. The firm received additional data. I personally wasn't in charge of those reconciliations. So, as to the nature of its completeness, I couldn't testify to that.

Q. Who was in charge of any subsequent reconciliations of the firm's stock records? And my question is with respect to Schedule B or subsequent iterations of Schedule B, as far as you're aware, sir.

A. Well, that's two questions. So there's a group that's responsible for the stock record reconciliations, which is the firm Balancing Department, which I don't remember who was in charge of it at the time, but it would have been the firm Balancing Department that's responsible for that in conjunction with the Clearance folks.

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They focused on putting the stock record back in balance, but I don't know whether there was any reconciliation once the stock record was back in balance to the original Schedule B.

Q. The securities that were transferred from Lehman to Barclays on the 19th?

A. Yes.

Q. Was it your idea to transfer those or was that the idea of someone you reported to?

A. It wasn't that it was a unique idea of my own. What it was, it was a normal course transaction, which we had previously deposited cash as a result of the problems we had the night before.

And in a repo transaction, I think I mentioned earlier, you typically wouldn't deposit cash to get cash. So it's, you know, it's a normal course transaction and it was a situation where you're not using your collateral efficiently to try to find substitute collateral. Especially in a tri-party arrangement, you have full rights to go ahead and do that, and that type of transaction is

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typically affected by Operations personnel, not Trading personnel.

So, you know, I discussed with the folks at Barclays the previous night and, you know, and at Lehman that we were going to, you know, the next morning we were going to look to do exactly that and replace the cash with, you know, substitute collateral.

Q. Can you be more specific about the names of the people you discussed this with?

A. At Barclays I spoke to John Rodefild about it, and at Lehman I would have spoke to Monty Forrest and Alastair Blackwell about it.

Q. And did Mr. Forrest and Mr. Blackwell approve of this transaction?

A. Yes, they understood it to be a normal course function that I would have done at any other point in time.

Q. So I'm clear, it was something that -- this transfer of approximately \$1.1 billion was done on your initiative, correct?

A. That's correct, yes.

Q. But what you say is this is something that was --

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A. Commonplace.

Q. -- commonplace in this commercial situation?

A. Yes.

Q. And the underlying commercial contract that governed this transaction was the tri-party repo that you've testified about today?

A. Yes.

Q. And just so the record is clear, no cash was ever returned to Lehman in return for this transfer of \$1.1 billion in additional unencumbered collateral to Bank of New York on the 19th of September, correct?

A. To my knowledge, that's correct.

Q. I have a few documents to show you.

(Exhibit 147B, an e-mail sent from Mr. Hraska to Paolo Tonucci, copying others, on Friday, the 19th of September, 2008, marked for identification, as of this date.)

Q. Showing you, Mr. Hraska, what I've marked as Tab 147B. Let me know when you've had a chance to look at that document.

(Document review.)

A. Okay.

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Q. I'll identify this for the record as an e-mail sent from Mr. Hraska to Paolo Tonucci, copying others, on Friday, 19th of September, and at this time written here 2:28 P.M. is in GMT. So in Eastern Standard Time, that's about 10:30 in the morning.

A. Uh-huh.

Q. Do you recognize this document, sir?

A. I do.

Q. The subject is pledges. It says, "Paolo," and you write to Mr. Tonucci, "We managed to pledge over about 800 MM in MV to BarCap." What does that mean?

A. "MM" is a term that means millions, and "MV" is market value. So the assets that we had pledged over up to that point were, in our estimation, from the, you know, our systems, the way we had them marked, was worth about 800 million in value.

Q. So the 800 in MV is Lehman's marks?

A. Those are Lehman's marks, yes.

Q. And was this a transfer that you had instructed on Friday morning, the 19th?

A. That was part of it. Being that it's

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only 800 million, I don't believe it was all of it that ultimately ended up getting transferred over.

Q. Is this 800 million part of the 1.1 million we have just been discussing that was transferred that same day, the 19th?

A. It would have been, yes.

Q. You go on to say, "We may have identified another 500 million, but I wanted to check with you first before pledging it to them."

A. Yes.

Q. Do you recall whether Mr. Tonucci replied to you?

A. I don't recall.

Q. That's all I have for that document.

(Exhibit 148B, an e-mail chain, the first in time dated September 19, 2008, at 3:43 P.M., marked for identification, as of this date.)

Q. I've handed you a document I have marked as Exhibit 148B. Tell me when you've had a chance to look through it.

(Document review.)

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Q. Of course, you are welcome to look at the whole document. It's really the original e-mail at 3:43 P.M. that I'm going to focus my questioning on. It's a two-page document. It's double-sided.

A. I didn't realize it was double-sided. I'm sorry.

(Document review.)

A. Okay.

Q. At 3:43 P.M. on Friday, 19th, you write to Mr. Feraca, Mr. Aronow, and others, on the subject of an urgent tri unwind. You say, "We pledged only 800 million of new collats to BarCap. All is frozen."

A. Are we talking about the same document?

(Indicating.)

A. Oh, on the very last sentence. I'm sorry. Okay. I'm sorry. Go ahead.

Q. Do you see where it says, "We pledge only 800 million of new collat to BarCap. All is frozen"?

A. I do, yes.

Q. Does that refresh your recollection

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about the amount of collateral you posted with Barclays on the 19th of September?

A. It may have been the market value at that particular point in time. We are still able to pledge through -- at 3:43 it would have been a time that we still technically would have been able to pledge assets from DTC to Barclays if we determined there was availability.

So at the time, I'm comfortable that that's what it was, but as it determined later, we moved more than 800 million worth of securities.

Q. What do you mean "all is frozen"?

A. I don't know. Looking at it now, I don't really recall the context of what I was referring to with "frozen." I apologize.

Q. Does it perhaps refer to your earlier testimony and to Chase freezing the movement of any further cash?

A. To be honest, I don't know.

Q. Okay.

MR. SHAW: Are you done with this one?

MR. OXFORD: Yes.

(Exhibit 149B, an e-mail from Gene

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Lempert, to Mr. Hraska, Sunday, September 21, at 3:38 A.M. GMT, or 11:38 P.M. EST, marked for identification, as of this date.)

Q. Did you have an understanding, Mr. Hraska, that the 800 million of collateral we have just been discussing was of particular importance to the deal?

A. Can you specify the deal you're referring to?

Q. The transaction between Lehman and Barclays, the purchase transaction.

A. At that point in time, the significance of that transaction to me was that we were trying to do a substitution for part of the 7 billion that we had pledged over the previous night in cash.

Q. And what was the purpose of the substitution of this collateral for cash?

A. The purpose was purely efficiency of collateral usage. If you're going to obtain financing on a secured loan, you typically get cash, right? You pledge an asset. It wouldn't make sense to get cash and pledge cash right back again, so that's why we were looking to

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substitute securities as opposed to cash on that repo transaction.

Q. Was Lehman trading that day, the 19th?

A. Lehman was -- was trading, yes.

Q. And was the cash needed for any particular activity?

A. I don't know that I could effectively comment on that. I mean, they were trading. They would have had cash requirements. So but as to whether it was for a particular activity, I don't know.

Q. No one articulated a particular need or purpose behind this cash?

A. No.

Q. If you look at what I have marked as Exhibit 149B, please.

A. Sure.

Q. And let me know when you've had a chance to look at it.

(Document review.)

MR. OXFORD: For the record, I'll identify this as an e-mail from Gene Lempert, to Mr. Hraska, Sunday, September 21, at 3:38 A.M. GMT, or 11:38 P.M. EST.

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MR. SHAW: The previous night.

MR. OXFORD: Yes, previous night.

Thank you.

A. Okay.

Q. Do you recall this document, sir?

A. I do, yes.

Q. It appears from the document that some technical staff were trying to restore a database; is that correct?

A. Yes, that's correct.

Q. And that's the database called Magics?

A. That's correct.

Q. What is the particular file that the technical people are trying to restore, if you know?

A. This was the file of the assets transferred on the 19th which made up the 1.0345 million.

Q. Do you have an understanding of why there was an attempt made to restore this file?

A. At some point in time, I don't recall who it was, but somebody had asked that we made sure we were able to retain records of everything that we had transferred over or were

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we sure that all the records that we had were going to be able to prove out what we transferred over.

For the assets that were held in the O74, the mechanism that we used to transfer was the front end system Magics connected to our O74 DTC depo, and because we were delivering them to the Bank of New York, which was not anyplace that we had delivered prior to the 18th, we weren't 100 percent sure that these records would have been stored in the database. So I was double-checking to make sure the database hadn't been overwritten because it was a brand-new process.

I testified a little bit earlier we had no connectivity to the Bank of New York prior to the 18th, so that was me confirming that we in fact would have had the records available to us.

Q. If I understand your testimony correctly, it was your idea to have the file restored; is that correct?

A. Yes, that's correct.

Q. Do you see on the front page of the

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document I have marked as the exhibit that you write to Mr. Lempert at 11:17 P.M. on Saturday, do you see that?

A. Yes.

Q. It says you're working through the night, as I imagine a number of other people were. The second paragraph says, "The BarCap purchase of us hinges on us having enough collateral to cover shortfall."

What did you mean by that?

A. Honestly, I don't know. I assume it was based off of a comment that somebody had made to me, but I just don't remember the particular context of that. I'm sorry.

Q. Do you know what "shortfall" means in this context?

A. I don't. I mean, prior to seeing this, I didn't remember making that comment, so I don't.

Q. If I understand your testimony correctly, your having restored a file that relates to the transfer of a billion dollars of collateral that's already gone to BarCap?

A. That's true, yes.

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Q. I guess your comment doesn't make any sense to me in that context. Why would the restore of a file for a transfer of a billion dollars of data that's already -- I'm sorry, a billion dollars of collateral that's already been transferred relate to the question of whether or not you have enough collateral to cover a shortfall?

MR. SHAW: Objection to form.

A. I honestly don't know. If I could remember the context of why I wrote the sentence, I would be able to answer you, but I just don't remember why I put this in here.

Q. Maybe if you hadn't been up all night, you would remember.

The next sentence says, "This 800 million is critical to the deal." Do you recall writing that?

A. I don't recall writing it. Obviously I did write it, but I don't recall writing it, no.

Q. Sitting here today, do you know what you meant when you told Mr. Lempert that this 800 million is critical to the deal?

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A. No. Quite honestly, I'm confused on the number of 800 because it doesn't tie into any of the other things we were talking about in this. I know that on that day we transferred -- on the 19th, we transferred a billion-35. So I honestly don't know where that 800 number ties in.

(Exhibit 150B, Mr. Lempert to J.

Hraska and others, Sunday, 9/21, at 1:34 A.M. GMT, marked for identification, as of this date.)

Q. I'm handing you what I have marked as Exhibit 150B, which is an e-mail from Mr. Lempert to you and others, Sunday, 9/21, at 1:34 A.M. GMT, which is 9:34 P.M. Eastern, on Saturday. Let me know when you've had a chance to look through that document.

(Document review.)

A. Okay.

Q. This is an e-mail that I think relates to the same topic as Exhibit 149. On the second page there's an entry in the string at 8:19 P.M. There's an e-mail from you to Mr. Lempert and others. It says, "Mike, I urgently need to get

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1 a hold of a file that shows all the items we
2 pledged to BONY 885 on Friday. Pete says it was
3 around about 800 million MV. Need this for
4 Paolo. Please send to Nancy and I."

5 Is this your original request for the
6 restore to Mr. Lempert?

7 A. It is, yes.

8 Q. What's BONY 885?

9 A. This is the Bank of New York pledge
10 location at DTC.

11 Q. You say, "Need this for Paolo."

12 A. I believe --

13 MR. SHAW: There's no question
14 pending.

15 Q. What do you believe? Was this
16 something that Mr. Tonucci had asked you for?

17 A. I believe that Paolo had requested
18 that we make sure we had complete records of
19 everything that we transferred on the deal,
20 which is why I needed it for Paolo.

21 Q. You'll see there's a file attached to
22 this document and the file is named
23 Tri49192008.XLS, you see that?

24 A. I'm sorry.

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1 Q. It's the attachment on --

2 A. Right. Okay. And this file behind
3 it -- that's it, right.

4 Q. Is it that file?

5 Do you believe that this is the
6 restored file of the unencumbered collateral
7 that you had transferred to the Bank of New York
8 for the benefit of Barclays on September 19,
9 2008?

10 A. Yes.

11 Q. That's all I had for that document.

12 (Exhibit 151B, an e-mail from Monty

13 Forrest to Mr. Lowitt, Mr. Blackwell, Mr.
14 Ullman and J. Hraska, copying Mr. Tonucci
15 and others, sent on Sunday, 9/21, at 9:16
16 A.M. GMT, marked for identification, as of
17 this date.)

18 Q. Mr. Hraska, I've handed you a document
19 marked Exhibit 151B, which I'll identify for the
20 record as an e-mail from Monty Forrest to Mr.
21 Lowitt, Mr. Blackwell, Mr. Ullman and you,
22 copying Mr. Tonucci and others, sent on Sunday,
23 9/21, at 9:16 A.M., GMT, or 5:16 A.M. eastern.
24 Let me know when you've had a chance to review
25

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1 that.

2 (Document review.)

3 A. Okay.

4 Q. Do you recall this document?

5 A. I do.

6 Q. First of all, if I can direct your
7 attention to the e-mail that begins at the
8 bottom of page 1, the top of page 2, from Mr.
9 Lowitt that is sent to you, Monty Forrest,
10 Alastair Blackwell and Neal Ullman.

11 Do you recall receiving that e-mail
12 from Mr. Lowitt?

13 A. I remember this string. I don't
14 particularly remember this particular blurb.

15 Q. Did you attend the 7 A.M. meeting?

16 A. I did not, no.

17 Q. Mr. Lowitt says, "Good luck getting
18 additional collateral, but to get accurate
19 presentation of the collateral is also critical
20 as we will append to the agreement," do you see
21 that?

22 A. I do, yes.

23 Q. Do you recall reading that at the
24 time?

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1 A. No.

2 Q. Did you have any understanding at the
3 time you received this e-mail or at any time
4 over the weekend that the work you did to
5 identify additional collateral would be appended
6 to any type of agreement?

7 A. No, unfortunately. The weekend, as we
8 discussed previously, I mean, I can't even tell
9 you how many hundreds of e-mails I got. So it's
10 conceivable that I didn't see everything in
11 every e-mail, so... I just don't recall this
12 passage.

13 Q. Monty Forrest replies to the chain and
14 he says, "We have analyzed any unencumbered
15 assets in all boxes that were not picked up by
16 financing systems." Do you know what that
17 means?

18 MR. SHAW: Objection to form.

19 A. I don't know what he means by that
20 phrase. It wouldn't have been the way I would
21 have phrased it, but ...

22 Q. How would you know how to phrase it if
23 you don't know what he means?

24 A. Well, he provides a market value of
25

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the collateral, and those market values came from the work that me and my team did. So I don't know why he's referencing finance systems here. These were collateral pieces that were based in the mainframe which was picked up by GFS. I'm just not sure what he's referring to by "financing systems."

Q. So you see there's a total there, Mr. Hraska, of close to \$2.3 billion?

A. Yes.

Q. Does that represent the unencumbered assets that, at least as of the date of this e-mail, you and your team had been able to identify?

MR. SHAW: Objection to form.

A. I can't be certain. I can't be a hundred percent certain. I don't know.

Q. Did you look for unencumbered assets in any location other than those listed in the e-mail from Mr. Forrest here?

A. We looked for all unencumbered assets in the stock records. These were the ones that we thought that had the highest probability of having unencumbered assets in them. They were

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A. Uh-huh.

Q. Relates to BONY Tri Pledge line item?

A. Yes.

Q. Does that refresh your recollection about any of your prior testimony about the reason the file was restored?

A. Well, it was restored because we wanted to maintain records, but according to this, it appears that complete restore maybe wasn't possible. But I wouldn't change my reason to have requested the restore on the file.

Q. After reading this e-mail, is it still your testimony that the transfer of approximately \$1.1 billion from Lehman to BONY pledged to Barclays on the 19th of September settled?

A. Yes.

Q. That's all I have with that exhibit.

I'm handing you, Mr. Hraska, a one-page document that's previously been marked Exhibit 93B. If you can take a look at that and let me know when you've reviewed it, please.

I'm sorry, it's a two-page document.

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our primary clearance boxes.

Q. Were you looking for physical securities as well, Mr. Hraska, that weekend?

A. We had, yes, we had looked through some of the clearance locations for physical securities, but based on the analysis, we, over the course of that weekend, weren't confident enough that we could determine whether those assets were unencumbered or not so we left them off of this analysis.

Q. Did you leave physical securities off not just this analysis, but any analysis of unencumbered assets you provided to Mr. Forrest?

MR. SHAW: Objection. Vague as to time.

Q. My question is specifically with respect to this weekend of the 20th and 21st of September.

A. We did an analysis of this weekend. Based on that analysis, we didn't forward any value of unencumbered securities which were physical.

Q. You see the paragraph immediately following the 2.3 billion number?

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(Document review.)

Q. I'll direct your attention to item 1 in the box, and if you would just identify for the record. This document is entitled "Management of Unencumbered Asset Gap." Actually, let me first direct your attention to the first line that says, "Objective: Delivery to BCI of 1.95 billion of unencumbered collateral by COB Friday, September 19." Do you see that?

A. I do, yes.

Q. Were you aware of any objective to deliver 1.95 billion of unencumbered collateral to Barclays by the close of business on Friday, the 19th?

A. No.

Q. Item 1 in the box that's headed "Current Status Summary" is "Actual Delivery EOD Friday." Do you see that?

A. I do.

Q. Do you believe that refers to the approximately \$1.1 billion of collateral that we've been discussing that was transferred from Lehman to Bank of New York on Friday, 19th?

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2 transfers.

3 Q. That's all I have for that document.
4 Could you pick out Exhibit 140B and
5 maybe 141B while you're at it.

6 A. Would these have been much earlier or
7 were these exhibits marked earlier on?

8 Q. These would have been exhibits marked
9 by Mr. Hine.

10 A. What was the number?

11 Q. 140B and 1401B.

12 A. You said 140B and 141B?

13 Q. 140 and 141.

14 A. Okay.

15 Q. Let's do 140B first.

16 A. Okay. Did you have any involvement in
17 preparing any of the schedules that are attached
18 to this document?

19 MR. SHAW: Asked and answered.

20 Q. And the answer was no?

21 A. The answer is no.

22 Q. Are you able to identify what the
23 first spreadsheet attached here is, either by
24 reference to the spreadsheet itself or by
25 reference to the e-mail? And if it helps, the

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2 fourth paragraph of the e-mail says, "The
3 attached document entitled DTC 074 and 636
4 available. Call," is the second part of
5 Schedule B.

6 A. No, these file names don't appear
7 familiar to me. By looking at this file, this
8 doesn't look like a file that I produced.

9 Q. If you look at Bates range ending
10 52704?

11 A. 52704?

12 Q. Which is just before the second blue
13 piece of paper.

14 A. Okay.

15 Q. Do you see that?

16 A. 52704? Yes.

17 Q. Do you see at the bottom of the column
18 headed "Lehman Market Value" there's a figure
19 approximately \$269 million?

20 A. Yes, right.

21 Q. Does that refresh your recollection
22 about what this spreadsheet refers to?

23 A. 269 million was approximately one of
24 the market values from one of the DTC boxes. I
25 don't recall which, but that's what that would

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2 have -- that's what that would have referred to.

3 Q. I take it since you were not involved
4 in the preparation of this document you are not
5 able to tell me whether or not these records
6 included the 800 Cusips that were on the
7 exception list we've previously discussed?

8 A. No.

9 Q. Okay. That's all I have for that
10 document.

11 Can you have 141 in front of you,
12 please? Sorry, 141B. Same question. I just
13 wanted to make sure I understood your testimony.

14 So you were not involved in the
15 preparation of these attachments?

16 A. I was not involved in the preparation
17 of these.

18 Q. And from a review of the e-mail on the
19 attachments themselves quickly, are you able to
20 tell me what they are?

21 A. Based off the e-mail, they appear to
22 be Schedule A and B, but I --

23 Q. But beyond that, you have no
24 independent knowledge?

25 A. No. Sorry.

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2 Q. Thanks. That's all I have for that.

3 I'm handing you a document that's
4 previously been marked as Exhibit 85B. If you
5 could take a moment to look at the e-mail, and
6 in particular to the first page behind the blue
7 sheet, which is entitled "Lehman

8 Brothers/Barclays APA Lead Sheet."

9 And let me know when you've had a
10 chance to do that, please. The Bates range of
11 85B is BCI-EX-S-00004396 through 4675.

12 (Document review.)

13 A. Okay.

14 Q. Do you recognize this document, sir?

15 A. Only from the preparation I did for my
16 deposition of my 30(b)(6).

17 Q. Other than in preparation for your
18 deposition, have you ever seen this before?

19 A. No.

20 Q. Do you know who the people are who are
21 identified on this e-mail chain from Mary
22 Korycki sent September 29 at 8:19 P.M.?

23 MR. SHAW: Are you going to go through
24 each person and say who they are?

25 MR. OXFORD: Uh-huh.

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<p>1 HIGHLY CONFIDENTIAL - J. HRASKA</p> <p>2 knowledge, there were no transfers on 9/26. I</p> <p>3 believe that's the market value of the positions</p> <p>4 that were transferred on 9/19.</p> <p>5 Q. If there were transfers from the DTC</p> <p>6 box of Lehman to Barclays on 9/26, would you</p> <p>7 know about it?</p> <p>8 MR. SHAW: Objection to form.</p> <p>9 A. I don't know.</p> <p>10 Q. Would you expect to know about it?</p> <p>11 MR. SHAW: Objection to form.</p> <p>12 Incomplete hypothetical.</p> <p>13 A. I would hope to know about them.</p> <p>14 Q. The next set of entries relates to</p> <p>15 Monday transfers. Do you see those?</p> <p>16 A. Yes.</p> <p>17 Q. Are you aware of any transfers from</p> <p>18 Lehman to Barclays of unencumbered securities on</p> <p>19 Monday, September 29?</p> <p>20 A. Yes, I am.</p> <p>21 Q. Are those transfers the transfers that</p> <p>22 are reflected in this lead sheet totaling</p> <p>23 approximately 333 million?</p> <p>24 A. I recognize the 269. I can't confirm</p> <p>25 the 63.</p>	<p>1 HIGHLY CONFIDENTIAL - J. HRASKA</p> <p>2 Q. How is it you recognize the 269?</p> <p>3 A. I recognize the 269 as positions that</p> <p>4 we had in 636.</p> <p>5 Q. I notice that the figure that you say</p> <p>6 you recognize of a Monday transfer of</p> <p>7 \$269,921,368 is similar to the figure above?</p> <p>8 A. Yes.</p> <p>9 Q. At 36 -- sorry, 636?</p> <p>10 A. Right.</p> <p>11 Q. But not identical?</p> <p>12 A. Yes, that's true.</p> <p>13 Q. Do you believe the relationship</p> <p>14 between these figures is anything other than</p> <p>15 coincidental?</p> <p>16 A. I'm sorry, could you repeat that one</p> <p>17 more time?</p> <p>18 Q. Do you believe there's any</p> <p>19 relationship between those two figures of 269</p> <p>20 million as they appear on this page?</p> <p>21 MR. SHAW: Objection to form.</p> <p>22 A. I believe they are the same block of</p> <p>23 securities, meaning that this is what was deemed</p> <p>24 to be available and this was when it was</p> <p>25 actually transferred.</p>
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<p>1 HIGHLY CONFIDENTIAL - J. HRASKA</p> <p>2 Q. And you believe those to be</p> <p>3 unencumbered securities that were in Lehman's</p> <p>4 636 box at DTC as of Monday, September 29, 2008,</p> <p>5 correct?</p> <p>6 A. As of Monday, I'm sorry, which date?</p> <p>7 Q. As of Monday, September 29.</p> <p>8 A. Yes, that's correct.</p> <p>9 Q. Do you have any information about the</p> <p>10 figure that appears below the 269, the second</p> <p>11 269 million figure we've been looking at,</p> <p>12 \$63,569,597?</p> <p>13 A. No, that figure is not familiar to me.</p> <p>14 Q. If you wanted to find out what that</p> <p>15 figure referred to, who would you ask?</p> <p>16 A. Well, in relation to this document, I</p> <p>17 would ask one of the people CC'd on this e-mail.</p> <p>18 Q. There's a reference in Footnote 1 to</p> <p>19 chilled securities, do you see that?</p> <p>20 A. Yes.</p> <p>21 Q. Do you know what that chilled</p> <p>22 securities are?</p> <p>23 A. Yes, I know what chilled securities</p> <p>24 are.</p> <p>25 Q. What are they?</p>	<p>1 HIGHLY CONFIDENTIAL - J. HRASKA</p> <p>2 A. They are securities which have their</p> <p>3 movement between DTC locations restricted for</p> <p>4 one reason or another.</p> <p>5 Q. That's all I have for this document.</p> <p>6 (Exhibit 155B, a document bearing</p> <p>7 Bates Nos. BCI-EX-S-00017385 and 7386,</p> <p>8 marked for identification, as of this date.)</p> <p>9 Q. I'm handing you, Mr. Hraska, what I</p> <p>10 have marked as Exhibit 155B, a document marked</p> <p>11 BCI-EX-S-00017385 and 7386. The attachment was</p> <p>12 produced to me in native form, which is why it</p> <p>13 doesn't have a Bates range.</p> <p>14 MR. SHAW: So that's also why a number</p> <p>15 of columns are truncated.</p> <p>16 Q. If you could let me know when you've</p> <p>17 had a chance to review that, Mr. Hraska, I've</p> <p>18 got a couple questions.</p> <p>19 (Document review.)</p> <p>20 A. Okay.</p> <p>21 Q. Do you recognize this document?</p> <p>22 A. I do, yes.</p> <p>23 Q. It appears to be a document e-mailed</p> <p>24 by Mr. Forrest to Alastair Blackwell and Mr.</p> <p>25 Tonucci, copying you, on the subject of</p>

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"additional collateral moved to BarCap." Is that right?

A. That's correct, yes.

Q. There's an attachment to this document. Were you involved in creating it?

A. My team provided the data to create it, but we didn't actually create it.

Q. When you say "your team," who do you mean by "your team"?

A. Meaning myself, and this particular data was provided by myself and Nancy Denig.

Q. Do you have a recollection of providing this data specifically to Mr. Forrest on or around September 30, 2008?

A. Yes.

Q. Do you know the purpose for which you were providing this data to Mr. Forrest?

A. He had asked me for a summary of collateral that we had transferred to Barclays from the 19th to present day that we actually physically were able to move from the Lehman depositories over to Barclays.

Q. Where did you find the information to provide to Mr. Forrest?

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A. They were from spreadsheet records that I had kept in my group. The same spreadsheet records which we referenced earlier had been reconciled with both the Barclays Operations folks and Bank of New York.

Q. Are these spreadsheets you took with you when you moved to Barclays?

A. The spreadsheets are saved in a common drive somewhere. I don't know that I still have access to them or not.

Q. "Mr. Hraska, here is a summary of the what has been moved in order to satisfy the additional collateral move of 1.95 billion to BarCap. I had also shown the outstanding amount due. We will continue to identify available unencumbered collateral as the stock record breaks clean up."

Do you see that?

A. Yes.

Q. Do you know what Mr. Forrest meant when he said, "We will continue to identify available unencumbered collateral as the stock record breaks clean up"?

A. Yes. When we had spoke a little

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earlier about the inconsistencies with the stock record and the initial collateral availability lists that were provided not being accurate, so after we had moved over some of the collateral, and as the stock record breaks cleared up, we kept looking for -- looking at the stock record and trying to find additional available collateral that was now unencumbered as a result of resolution of the breaks.

Q. Do you recall for how long you were engaged in that effort to find additional unencumbered collateral?

A. During which timeframe?

Q. At any time post the closing of the transaction between Lehman and Barclays on the 22nd of September, 2008?

A. I was involved in an effort up until probably approximately a month ago.

Q. Who else was involved in that effort?

A. Robert Azerad's team.

Q. Who is on Mr. Azerad's team with respect to this effort?

A. Well, he's no longer on the team anymore. It would have been a gentleman by the

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name of Colin Telmer, T-E-L-M-E-R. He's still employed at Barclays. He's just not working with Mr. Azerad anymore.

Q. Anybody else?

A. There was another gentleman initially involved, but he subsequently left the firm, and as well Mr. Telmer took over his work and continued -- his name was John Virgil Del Dios, I believe. I'm not exactly a hundred percent sure of the spelling of that. I believe it's D-E-L D-I-O-S, but best I can do.

Q. Do you understand that this effort to identify additional collateral to move from Lehman to Barclays is still ongoing within Barclays, or do you believe that it's complete?

A. From my perspective, I believe it's complete. I haven't been asked to do anything else in probably at least a month or so's time.

Q. Who asked you to identify this additional collateral?

A. Robert Azerad.

Q. These requests at any time from September 30th or thereabouts, 2008, until about a month ago all came from Mr. Azerad?

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A. Yes.

Q. Did you have any conversations with anybody other than Mr. Azerad, Mr. Telmer, and Mr. Del Dios about your ongoing efforts to identify additional unencumbered assets to be moved from Lehman's clearance boxes to Barclays?

A. I had conversations just to keep them informed of my activities with both Messieurs Forrest and Blackwell.

Q. Could you take a look at the last page of the spreadsheet that I have marked as Exhibit 155B.

A. Uh-huh.

Q. This spreadsheet includes data that you provided to Mr. Forrest?

A. Yes, that's correct.

Q. Do you believe that data is accurate?

A. Yes. The one thing that -- the one thing that I'm not sure is accurate is the market value of the BONY, the BONY pledge. I knew that value to be a little bit less, so I'm not sure why that's not a billion-035 that we've been discussing.

Q. And the second entry is the \$269

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million transfer from Box 636 on the 29th of September that we discussed previously, yes?

A. Yes, that's correct.

Q. There's another entry under Summary of Collateral Moved from O74?

A. Yes.

Q. A transfer on 9/30/09, do you see that?

A. Yes.

Q. That transfers, as reflected here, is of \$161,482,771, do you see that?

A. Yes.

Q. Do you know anything about that transfer?

A. That was the value of the assets that were transferred on the 30th from O74 to Barclays.

Q. And were you involved in that transfer?

A. Yes.

Q. What was your involvement in that transfer?

A. My involvement was can you help identify the assets and coordinate with the

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settlement teams to get that transferred.

Q. Did you or anyone on your team do any due diligence to satisfy yourself that those assets were not encumbered?

A. Yes.

Q. Can you tell me briefly what that was?

A. Myself and the Settlements Team headed by Neal Ullman verified that those were in fact unencumbered and those transfers both for 636 and O74 were verified by Deloitte.

Q. Who at Deloitte verified them?

A. Ultimately, Margo -- I forgot her last name.

Q. Marlo.

A. Marlo Karp.

Q. And it's your testimony that Marlo Karp verified them as transfers of Lehman's proprietary assets that were to be transferred from Lehman to Barclays under the purchase agreement?

A. I know that Marlo was involved in the approval. I don't know if she was specifically the one that did the verification. I know that she was aware of it and someone from her team

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did the verification.

Q. Do you have an understanding as to when this verification that you say happened by Deloitte, do you understand when it happened?

A. It would have happened a few days prior to the transfer dates.

Q. If you were to learn that Deloitte was not engaged by the trustee as of the date of this supposed transfer, would that change your testimony?

A. No.

Q. You still think even though they weren't engaged they still did the verification?

A. I know for a fact that they approved these transfers.

Q. How is it you can be so certain? Did you talk to someone about it?

A. Well, I had conversations with Neal Ullman, who said that that transfer was approved, and I believe I have e-mails stating that fact. But I'm not a hundred percent certain, but I believe I do.

Q. So the basis of your -- because you just testified that you were certain Deloitte

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1 approved these transfers a few days prior to the
2 29th and 30th. That was your testimony,
3 correct?

4 A. Yes, it was.

5 Q. And the basis of your sworn testimony
6 is that Mr. Ullman told you this?

7 A. Yes.

8 Q. And you're sure that Mr. Ullman told
9 you Deloitte approved them?

10 A. I'm -- I thought, unless it was the
11 trustee approved them. They were definitely
12 approved, according to him, so -- it's my
13 recollection that it was Deloitte, but I -- it's
14 possible that it was the trustee itself and
15 not -- not Deloitte.

16 Q. And any information you have about the
17 approval of these transfers, whether by Deloitte
18 or the trustee or the trustee's staff, comes
19 from which sources, Mr. Ullman?

20 A. Mr. Ullman, yes.

21 Q. Any other source?

22 A. No. I didn't see, if you're asking
23 for approval, I didn't see an approval document
24 from Deloitte or the trustee themselves.

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1 transfers on the 29th and 30th of September from
2 the 636 and O74 boxes at DCT that are reflected
3 on the spreadsheet attached to Exhibit 155B.

4 A. So you're referring to the 29th and
5 30th, these transfers?

6 Q. Yes.

7 MR. SHAW: Objection to form.

8 A. I'm sorry, could you read back the
9 question?

10 (Record read.)

11 A. No.

12 Q. How is it you can be sure of that?

13 A. Because the repo had a maturity date
14 of September 25th, and prior to the maturity
15 date, the repo had been declared in default.

16 Q. Just moving down that summary page,
17 sir, it reads, "Amount identified to be moved to
18 BarCap, \$1.95 billion." Was that a figure that
19 you provided to Mr. Forrest?

20 A. No.

21 Q. So this -- the math here about the
22 delta between the 1.95 billion and the total of
23 the amount of unencumbered security transferred
24 of 1.587 billion, that's Mr. Forrest's math?

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1 Q. Have you seen any correspondence
2 reflecting that Deloitte or the trustee approved
3 this transfer?

4 A. I can't be certain about that.

5 Q. By this transfer, that was a bad
6 question, but I meant both the transfers on the
7 29th and the 30th that are reflected in this
8 document?

9 A. Yes.

10 Q. So, apart from this conversation with
11 Mr. Ullman, you have no independent basis to
12 testify that Deloitte or the trustee approved
13 these transfers on these dates, correct?

14 A. That would be correct.

15 Q. Do you remember when the conversation
16 with Mr. Ullman took place?

17 A. It should have taken place on the --
18 prior to the transfers. Period of a few days
19 prior to the transfers. I can give you a range.
20 I don't know specifically what date.

21 Q. That's fine. Thank you.

22 Is it possible that those transfers
23 relate to the repo transaction? And "those
24 transfers," again, I'm referring to the

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1 A. Yes.

2 Q. Do you believe that that figure of
3 total pledged/transferred that appears in this
4 spreadsheet we're looking at is an accurate
5 reflection of the collateral moved from Lehman's
6 unencumbered box to Barclays between the 19th
7 and 30th of September, 2008?

8 MR. SHAW: Objection. Asked and
9 answered.

10 A. Yes, with the exception of the
11 discrepancy on market value, that I believe the
12 market value to be a billion-035.

13 Q. Right. I appreciate that
14 clarification. You did say that.

15 You testified in response to one of
16 Mr. Hine's questions that you believed that
17 there was an additional amount of somewhere
18 between 6 and 7 hundred million dollars of
19 unencumbered securities --

20 A. Uh-huh.

21 Q. -- that you understand was due from
22 Lehman to Barclays?

23 A. Yes, that's correct.

24 Q. That's obviously a different number to

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this delta figure of 362 million here?

A. Yes, that's correct.

Q. Do you have any understanding of the reason for the difference?

A. Well, this is purely a delta of the two figures that Mr. Forrest provided. The 600 to 700 million that I was referring to were based off an analysis of unencumbered securities in the Lehman boxes at a later date and time. So I think that's where there's a discrepancy because of the timing.

Q. Are you able to estimate a total of the unencumbered securities in the various Lehman clearance boxes that you reviewed, either over the weekend of the 20th and 21st of September or subsequently, are you able to give me a total of the unencumbered securities that you believe you identified?

A. On that weekend? Or, when you say "subsequently"?

Q. At any time subsequently. Obviously you identified a figure that fluctuated, as we saw in the documents that we looked at and you looked at with Mr. Hine of approximately 1.9 to

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2 billion dollars?

A. Yes.

Q. And you've subsequently identified additional collateral you say of at least a few hundred million?

A. That's correct.

Q. Correct. Are you able to give me, just in broad terms, an estimate of the total amount of unencumbered collateral that you believe you have identified?

A. That would be available let's say as of today if nothing had happened in the clearance box?

Q. Yes. That's a much better question than I would have been able to articulate. Thank you.

A. Yes, that's the 6 to 7 hundred million dollar figure.

Q. And the total would be the 6 to 7 hundred million dollar figure plus this \$1.587 billion figure that has already been transferred subject, of course, to your caveat that you believe the BONY Tri Pledge number may be off by a factor of 10 percent or so, is that correct?

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A. That's correct, yes.

Q. Last document.

(Exhibit 156B, a letter from Cleary Gottlieb Stein & Hamilton is James Kobak at Hughes Hubbard dated October 6, 2009, marked for identification, as of this date.)

(Discussion off the record.)

(Recess; Time Noted: 5:24 P.M.)

(Time Noted: 5:30 P.M.)

BY MR. OXFORD:

Q. You testified in response to a question from Mr. Hine that you had been involved, Mr. Hraska, in efforts to refine Schedule B, do you remember saying that?

A. Yes.

Q. Can you tell me briefly about those efforts to refine Schedule B?

A. I don't know that I testified that I was involved in an effort to refine Schedule B but, rather, to identify additional assets that perhaps were not on the original Schedule B that were unencumbered.

Q. And you were also involved, I think you testified, in ascertaining that certain

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assets that were on the exception list were in fact encumbered and unavailable for delivery; is that correct?

A. I'm sorry, could you repeat that question or just read it back to me?

(Record read.)

A. That they were unavailable for delivery. I can't be certain that they were unencumbered; just they were unavailable for delivery.

Q. Why would they be unavailable for delivery other than the fact that they are encumbered?

A. It's possible that at a point in time a particular asset wouldn't have been in the actual box itself. So, in other words, there might have been an inventory position versus a break account instead of versus the actual repository.

Q. Can you take a look at what I've marked as 156B?

A. Sure.

Q. Which is a letter from Cleary Gottlieb Stein & Hamilton is James Kobak at Hughes

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Hubbard dated October 6, 2009.

Do you see that there are certain attachments to that letter? There are two spreadsheets attached to that letter at the back.

If you could take a moment to review the spreadsheets and let me know, first of all, if you need a magnifying glass and, second of all, if you had any involvement in preparing these spreadsheets.

(Document review.)

A. The spreadsheets are not titled like the content of the spreadsheet.

Q. There's the description on the last paragraph of page 2 going into page 3.

A. Okay. Last paragraph of page 2, you're saying, right?

Q. Yes. The second line reads, "The revised spreadsheet attached hereto as Exhibit A lists undelivered clearance box assets having Cusip numbers in which no LBI customers had long positions on September 20, 2008."

MR. SHAW: Why don't you take a minute to read that paragraph of the letter.

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Were you serious about the offer of a magnifying glass? Because I could use one.

MR. OXFORD: I actually think I have larger copies, which I don't intend to mark.

A. I can't tell where Schedule A and B are cut off.

Q. Exhibits A and B?

A. I'm sorry, Exhibits A and B.
(Document handed.)

MR. SHAW: What is this you have handed us? Is this A, B, or --

MR. OXFORD: These are blown up versions of Exhibits A and B to the Cleary letter dated March 6. I don't think Cleary marked them as either Exhibits A or B.

Q. Mr. Hraska, I don't mean to cut short your time to review these documents, but maybe we can short-circuit it a little bit this way.

Do you recall being involved in the preparation of these documents or any analysis to determine lists of undelivered clearance box assets having Cusip numbers in which no LBI customers had long positions as of September 22, 2008?

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A. Yes.

Q. Tell me about your involvement in that process.

A. Sometime in October, we had changed the sourcing of our search from unencumbered collaterals from GFS to the pure stock record of ADP, and the reason we did that is that we felt that to be a more accurate source at that time because, by that time, a lot of the stock record breaks had been resolved and we were going to go -- and the other mainframe, the MTS mainframe, we felt was exhausted so there was no need to use GFS to try to aggregate all that data together at that point.

Also, GFS became a system that was purchased or became part of the property that was purchased by Barclays, so we thought it was better just to refer to the pure mainframe, which was considered books and records. And the methodology used was that we took a download of the data from the technology folks of everything on the stock record, and the logic that was employed was that the first query was to return us all the situations where there was a firm

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inventory long offset by a depo short, which would be the depository, you know, off side of that position, and where the Cusip had no other position reflected on the stock record. So, therefore, no customer positions or anything of that nature.

So, in our mind, we felt that that was very clearly firm inventory only, there was no chance that there was customer collateral in that mix, and as long as there was a depo short which offset to the asset long, we felt confident that that would be considered a firm unencumbered asset.

The next query was, there were Cusips where there were a mix of firm inventory ledgers long and customer account longs. Those positions would have been offset by, again, a position in depo. Every long has a short in an amount in the stock record. And the -- to be as conservative as possible on the second list -- so the first list became known as List A in our terms, right? The second list became known as B and we had to subdivide it. So it became -- there is a B1 and a B2.

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<p>1 HIGHLY CONFIDENTIAL - J. HRASKA</p> <p>2 B1 was the situation where we compared</p> <p>3 the total amount of customer positions into the</p> <p>4 total amount in the depo, and we reduced the</p> <p>5 amount of the depo balance by the customer long</p> <p>6 position, and to the extent that anything was</p> <p>7 left after reducing that balance down by what</p> <p>8 the customer was long, we took that to be firm</p> <p>9 unencumbered assets.</p> <p>10 So just to -- because there's a lot</p> <p>11 just to recoup that. So there was positions</p> <p>12 where we had inventory in customer longs that</p> <p>13 were mixed. To be conservative, we secured the</p> <p>14 customer positions regardless of them having</p> <p>15 debit balances or not. We said, to be the most</p> <p>16 conservative, just reserve the amount of</p> <p>17 customer long position, take it out of the</p> <p>18 position in the depo, and whatever was left in</p> <p>19 the depo would be considered List B1.</p> <p>20 The B2 list was, looking at that same</p> <p>21 population, we said, as a lender of cash or an</p> <p>22 extension of credit to clients, you're entitled</p> <p>23 to rehypothecate up to 140 percent of the debit</p> <p>24 balance. So what we did then is we looked at</p> <p>25 situations where clients had long positions but</p>	<p>1 HIGHLY CONFIDENTIAL - J. HRASKA</p> <p>2 they were running a debit balance, and to the</p> <p>3 extent that they ran a debit balance, we claimed</p> <p>4 that we had entitlement to a hundred percent of</p> <p>5 the debit balance of the securities that were</p> <p>6 long in those customers' accounts, and that</p> <p>7 became B2.</p> <p>8 And the last sample population was</p> <p>9 scenarios where the only positions on the stock</p> <p>10 record were customer long versus the depo</p> <p>11 position, and those scenarios, using the same</p> <p>12 rules I just described about the margin debit</p> <p>13 balances, we looked at customer margin debit</p> <p>14 balances, and to the extent that they had margin</p> <p>15 debit balances, we took 100 percent of the</p> <p>16 market value, or we took market value equal to</p> <p>17 100 percent of the debit balance. That became</p> <p>18 list C.</p> <p>19 Q. That's B3. That's the --</p> <p>20 A. Well, the way I classified them is the</p> <p>21 way I knew them. So there was A, there was B1</p> <p>22 and B2, and C. There was some discussions</p> <p>23 about, because of the margin debit balance</p> <p>24 calculation, there was some discussion about</p> <p>25 combining B2 and C into one list by Robert</p>
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<p>1 HIGHLY CONFIDENTIAL - J. HRASKA</p> <p>2 Azerad's team. I don't know if they ever</p> <p>3 combined those lists or not. That may have</p> <p>4 become, as you reference, either B3 or a C list,</p> <p>5 I don't know.</p> <p>6 Q. In the analysis that you have just</p> <p>7 described for me, did you make any distinction</p> <p>8 between customers whose accounts were</p> <p>9 transferred to Barclays and customers whose</p> <p>10 accounts were not transferred to Barclays?</p> <p>11 A. In the analysis that we did, we used</p> <p>12 the stock record of Lehman Brothers, Inc. prior</p> <p>13 to those customers being put on the stock</p> <p>14 record. The -- well, wait. Let me clarify</p> <p>15 that.</p> <p>16 The stock record we used was a solely</p> <p>17 Lehman Brothers stock record. The stock record</p> <p>18 that Barclays now owns as a result of the</p> <p>19 technology that it had purchased in the Lehman</p> <p>20 acquisition is a different stock record. So</p> <p>21 it's the same -- it's the same mainframe and</p> <p>22 it's the same vendor provider, but it's a</p> <p>23 completely different set of records from Lehman</p> <p>24 Brothers.</p> <p>25 Q. Are you able to summarize for me how</p>	<p>1 HIGHLY CONFIDENTIAL - J. HRASKA</p> <p>2 it's different?</p> <p>3 A. The Lehman Brothers stock record only</p> <p>4 has the Lehman Brothers entity and the -- and</p> <p>5 all the Lehman Brothers stock record data,</p> <p>6 whereas the new stock record is purely the</p> <p>7 activity that's in the new Barclays Wealth</p> <p>8 Entity and the Barclays activity that resides on</p> <p>9 ADP Company 224.</p> <p>10 The legal entities on ADP are known as</p> <p>11 these company codes. So 224 is a BCI company</p> <p>12 code on ADP, and that stock record is related to</p> <p>13 the BCI entity on ADP. The company code for LBI</p> <p>14 was 012, and it was, again, held on a different</p> <p>15 version of ADP.</p> <p>16 So the vendor basically copied the</p> <p>17 functionality that he provided us under Lehman</p> <p>18 Brothers and provided a new instance of the</p> <p>19 package and the software and everything else,</p> <p>20 but it was a completely different entity and it</p> <p>21 was a different software.</p> <p>22 Q. Who else was involved with you in this</p> <p>23 effort to create lists A, B and C?</p> <p>24 A. Robert Azerad, Colin Telmer. There</p> <p>25 was some -- there was some Barclays Finance</p>

HIGHLY CONFIDENTIAL - J. HRASKA

folks who were also reviewing some of the spreadsheets that we had produced over that period. I don't recall who was on the Barclays finance side, but I'm sure Robert would.

And to the extent we had questions about a particular status of a clearance box or anything like that, Neal Ullman would have been consulted.

Q. Do you believe, Mr. Hraska, that the work you, along with Mr. Azerad and others, did to create lists A, B and C are ultimately reflected in the spreadsheets that are attached to the Cleary letter of March 6?

A. These are versions of the spreadsheets it looks like in form that we used. I'm not a hundred percent certain that these are the final spreadsheets that Colin and I agreed that came up to the total in assets.

List A appears to have all 931 accounts on it, and the 931 range that -- the prefix of this account, are all firm inventory ledgers. So it appears to be the list that's first described in that letter. However, I can't be a hundred percent certain since I

HIGHLY CONFIDENTIAL - J. HRASKA

didn't actually provide it.

Q. Are you able to draw any similar conclusions about the second spreadsheet that is attached to the Cleary letter and any work that you and your team did in preparing the data that may have gone into it?

A. This was one of the initial data spreadsheets that was used to analyze the B1, B2 relationship, but there was a summary document which was prepared based on the findings which, you know, broke out what we felt was B1 and which I, being conservative, reserving customer assets versus there was a separate schedule which then broke out what we thought, based off of margin debit balances, what the entitlements would be for that B2 and C. That doesn't appear to be included in these documents, at least the way I understood them to be.

Q. Was there any other documentation provided or created by you and your team as a result of the effort to identify lists A, B and C as you've testified?

A. Nothing more than what I just described to you, no.

HIGHLY CONFIDENTIAL - J. HRASKA

Q. That's all I have on those.

I'm hoping -- I think we're all hoping the answer to this is no. Did you have any involvement in the calculation or recalculation of Lehman's 15c3-3 requirements over the weekend of September 20th and 21st?

A. No.

(Continued on the next page to include the jurat.)

HIGHLY CONFIDENTIAL - J. HRASKA

Q. Did you have any discussions with anybody about the recalculation of Lehman's 15c3-3 requirement?

A. No.

MR. OXFORD: I've got nothing further for you, Mr. Hraska. Thank you.

THE WITNESS: You're welcome.

MR. KAY: No questions.

MR. HINE: I think we're done, unless you have any, John.

MR. SHAW: Tempting though it is, I will declare this deposition closed.

MR. OXFORD: Thank you very much.

THE WITNESS: Thank you.

(Time Noted: 5:53 P.M.)

JAMES HRASKA

Subscribed and sworn to
before me this day
of 2009.

1
2 UNITED STATES BANKRUPTCY COURT
3 SOUTHERN DISTRICT OF NEW YORK

4 IN RE:)
5)
6 LEHMAN BROTHERS HOLDINGS, INC.,)
7 et al.,) Chapter 11
8) 08-13555(JMP)
9 Debtors.) (Jointly
10) Administered)
11)
12 -----)

13 DEPOSITION OF JIM HRASKA
14 New York, New York
15 Friday, January 15, 2010
16
17
18
19
20
21
22
23

24 Reported by:
25 Philip Rizzuti
JOB NO. 27206

1 Hraska
2 MR. OXFORD: Would you mark this
3 document as Exhibit 561-D, spreadsheets.
4 (Exhibit 561-D, spreadsheets,
5 marked for identification, as of this
6 date.)

7 MR. OXFORD: Would you mark as
8 Exhibit 562-D, document headed Jim Hraska
9 30(b)(6) deposition notes.

10 (Exhibit 562-D, document headed
11 Jim Hraska 30(b)(6) deposition notes,
12 marked for identification, as of this
13 date.)

14 J I M H R A S K A, called as a witness,
15 having been duly sworn by a Notary
16 Public, was examined and testified as
17 follows:

18 EXAMINATION BY

19 MR. OXFORD:

20 Q. Good morning, Mr. Hraska.

21 A. Good morning.

22 Q. As you know, we met before, I am
23 Neil Oxford from Hughes Hubbard & Reed, we
24 represent the SIPA trustee in this litigation.
25 I also know you have been through this

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1 Hraska
2 deposition process before. You know the
3 ground rules, but if there is anything unclear
4 about any of my questions ask me and I will
5 clarify it.

6 If you answer any of my questions
7 without asking me to clarify it I will assume
8 that you have understood it. Is that fair?

9 A. Fair.

10 Q. Can you tell me how you define the
11 term clearance box, Mr. Hraska?

12 A. Sure. To me a clearance box is an
13 account at either a depository or a custodial
14 bank into which securities can be moved into
15 or out of.

16 Q. Does your definition include a
17 vault or depository that holds physical
18 securities?

19 A. Yes. That would be an account at
20 a custodial bank.

21 Q. Does it include settlement
22 accounts?

23 A. What I have just described is
24 also -- can be termed a settlement account.

25 Q. Does your definition of clearance

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1 Hraska
2 box also include safekeeping accounts?

3 A. A safekeeping account would be a
4 further clarification of a clearance account.
5 So basically the clearance account is the most
6 broad definition. And if an account is to be
7 a safe custody account it would be a further
8 distinction which earmarks it as a safekeeping
9 account I guess.

10 Q. If I understand your testimony you
11 are saying that a safekeeping account is a sub
12 set of the clearing boxes?

13 A. Well that depends on -- it depends
14 on the clearing relationship. In some
15 instances a safekeeping account is a
16 completely distinct and separate account. In
17 some instances it is a sub set of an existing
18 clearance account.

19 Q. Is that definition of clearance
20 box one that you applied in your involvement
21 in the creation of Schedule B to the
22 clarification letter?

23 A. That definition would have been
24 something that I would have applied, yes, to
25 Schedule B.

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1 Hraska
2 Q. Is that the definition to your
3 understanding that Lehman applied in its role
4 in creating Schedule B?

5 A. Yes. I would assume that is
6 the -- my understanding that that would be the
7 same definition, yes.

8 Q. Mr. Hraska, can you have in front
9 of you Exhibit 156-B?

10 MR. SHAW: 156-B, yes?

11 A. Yes. Okay.

12 Q. Mr. Hraska, do you recognize
13 Exhibit 156-B?

14 A. There is actually two documents as
15 part of this exhibit, right; are you asking if
16 I recognize both documents?

17 Q. Actually three documents. The
18 first is a letter from Cleary Gottlieb dated
19 March 6, March 6, 2009 and there are two
20 attachments to that, Exhibit A and Exhibit B?

21 A. Yes, I recognize all the
22 attachments and the letter.

23 Q. Could you turn to the start of
24 Exhibit A, please?

25 A. Yes.

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1 Hraska

2 **Q. Just to make sure we are on the**
3 **same page here, the first CUSIP number I have**
4 **appears to be 23321PUA4?**

5 A. Yes. That is correct.

6 **Q. I would like to ask you a few**
7 **questions about the particular depots that are**
8 **listed in column 6, do you see that, do you**
9 **see the depot listing?**

10 A. Yes.

11 **Q. First of all the IMD conversion**
12 **omni account which appears on line 2, do you**
13 **see that reference?**

14 A. I do, yes.

15 **Q. Do you know what that depot is a**
16 **reference to?**

17 A. I have a general idea of what that
18 specific account is for. But I don't -- that
19 particular account is not an account where --
20 that wouldn't be an account as described
21 earlier. That is an account that securities
22 are held at a -- well, I want to clarify this.

23 This is a temporary location, so
24 it is basically a transit location for
25 securities.

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1 Hraska

2 **Q. If I understand your testimony, it**
3 **is not within your definition of clarification**
4 **letter that you gave me a few moments ago; is**
5 **that correct?**

6 MR. SHAW: Objection to the form.
7 You said clarification letter, I think
8 you may have meant clearance.

9 **Q. Let me ask that again.**

10 **If I understand your testimony,**
11 **Mr. Hraska, the depot that appears in line 2**
12 **of the first page of Exhibit A in Exhibit**
13 **156-B, the IMD conversion omni, is that**
14 **included within the definition of clearance**
15 **box you gave me at the start of the**
16 **deposition, or is it not included within that**
17 **definition.**

18 A. Yes, I think it is included in it.
19 It is just a way to further segregate a
20 security in a particular transitory state.

21 **Q. Do you know what the reference is,**
22 **Mr. Hraska, to the conversion omni?**

23 A. I am not a hundred percent sure
24 what this particular omni is used for. A
25 conversion omni is typically a transitory type

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1 Hraska

2 of location. I am not sure what the IMD depot
3 is specifically used for.

4 **Q. Do you know whether or not this is**
5 **a PAM conversion account?**

6 A. Not with a hundred percent
7 certainty that it is, but...

8 **Q. Do you have any understanding?**

9 A. I think it may be, but I am not a
10 hundred percent certain.

11 **Q. If it is a PAM conversion account**
12 **do you think it should be on the schedule?**

13 A. I am not sure that I can answer
14 whether it should be on the schedule. I am
15 saying I know that it could be on the schedule
16 based off of the fact that the mechanics in
17 which assets are transferred in and out of
18 customer accounts would set it up to
19 potentially be on that schedule. But as to
20 whether that particular one belongs on there
21 or not I don't know.

22 I mean it is basically a
23 transitory location, so while a customer is
24 instructing to move assets out, those assets
25 are temporarily moved into a transitory

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1 Hraska

2 location. Those assets, you know, may or may
3 not have been originally in different
4 location, and they also may be in fail status.

5 But as to whether or not -- I am
6 not a hundred percent sure. I would say that
7 while they are still in transitory status to
8 me it makes sense that they are there.

9 **Q. Assuming for the purposes of the**
10 **next series of questions that it is in fact**
11 **the PAM conversion account, can you tell me**
12 **what your understanding is of the PAM**
13 **conversion account?**

14 MR. SHAW: Objection to the form.

15 A. My understanding of the PAM
16 conversion account is to the extent that
17 securities are being moved out of the normally
18 held custodial depot to an external depot or
19 to another depot, whether it be to either
20 another depo internally or to be made the
21 delivery to an external custodian away from a
22 particular institution, those securities will
23 end up temporarily in that account.

24 **Q. Do you know what the designation**
25 **PAM, P-A-M, means in the context of a PAM**

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1 Hraska

2 conversion account?

3 A. I don't know.

4 Q. You don't have any understanding
5 that PAM was a particular type of customer
6 that Lehman had?

7 A. Yes, the PAM, I don't remember
8 what the acronym stood for, they were
9 primarily I believe the wealth customers.

10 Q. Those wealth customers were not
11 moved to Barclays as of the closing of this
12 transaction on the 22nd of September; is that
13 correct?

14 A. That is correct.

15 Q. Those PAM customers were in fact
16 moved to Neuberger Berman; is that correct?

17 A. Yes.

18 Q. So can you think of any reason why
19 an asset that is in a PAM conversion account
20 would appear on a list of securities that
21 Barclays is claiming from Lehman?

22 MR. SHAW: Objection to the form.

23 A. It could have been a processing
24 error, it could have been it was instructed at
25 a particular time and it showed up in the

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1 Hraska

2 account, it had not been settled, or it
3 couldn't be settled because of securities not
4 being in a location accordingly. It could
5 have also been a clerical error in a clearance
6 process. Once a trade is cleared if it is
7 cleared incorrectly or it is cleared to an
8 incorrect location it could actually show up
9 in that particular box or in that particular
10 account without truly being there. So without
11 actually looking at the account and knowing I
12 wouldn't really know.

13 Q. Scrolling down the first page
14 about three inches below the entry we just
15 looked at you see there is a depot described
16 as 097-00074-15?

17 A. Yes.

18 Q. Can you tell me, Mr. Hraska, what
19 that is a reference to?

20 A. I don't know.

21 Q. Do you know whether or not that is
22 a reference to physical securities held at 70
23 Hudson Street?

24 A. I don't know. I mean just for
25 purposes of clarity we were -- in doing our

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1 Hraska

2 exercise we were given a list of eligible
3 clearance accounts by the clearance folks
4 which we used as a criteria. So, you know, my
5 involvement in creating some of these lists, I
6 mean we used that criteria. So, you know,
7 some of these don't have descriptions on it.

8 Q. What do you mean by your reference
9 in that last answer to eligible clearance
10 accounts?

11 A. To the extent that they are an
12 account where we would have been looking at
13 securities which were without encumbrances I
14 guess.

15 Q. Who provided to you this list of
16 eligible securities as you defined it?

17 A. Eligible securities or eligible
18 accounts; did I say securities?

19 Q. You said securities. Either way?

20 A. It was accounts, not securities.

21 Q. Either way who provided you,
22 Mr. Hraska, with a list of eligible accounts?

23 A. The clearance department.

24 Q. Whose clearance department?

25 A. At the time it was managed by Neil

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1 Hraska

2 Ullman.

3 Q. This is Lehman's clearance
4 department?

5 A. Yes.

6 Q. When you say at the time, what
7 time are you referencing?

8 A. It was the time when we were --
9 let's see, when was this. I honestly don't
10 recall the time. I know we had asked for it,
11 but I don't recall when it was provided.

12 Q. Do you know whether it was before
13 or after the closing of the transaction?

14 A. It would have been after the
15 closing.

16 Q. Do you know if it was 2008 or
17 2009?

18 A. I don't know. I don't know
19 specifically. It was either the end of 2008
20 or early 2009, probably 2009. I know it is a
21 year gap.

22 Q. Again I think we got it covered,
23 but can you tell me again if you know what
24 criteria Mr. Ullman used in providing you a
25 list of, quote unquote, eligible accounts?

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Hraska

A. I don't know what criteria he used. We asked for the list of accounts, he provided them. So I can speculate what he would have done.

MR. SHAW: Don't speculate.

Q. I am not asking for your speculation, only asking for your knowledge. Can you tell me, Mr. Hraska, exactly what it is that you asked Mr. Ullman for?

A. If I remember correctly when you say specifically, what I recall asking for is accounts which would not have been safe custody accounts or segregated accounts.

Q. Can you explain what you mean by each of those terms; first of all safe custody; secondly segregated account?

A. Yes. A safe custody account is, and a segregated account is basically one in the same. I mean a safe custody account is used to segregate positions for a particular purpose. The purposes for segregation are when the customer is fully paid for an asset, those assets need be protected away from firm assets. So they are typically put into either

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Hraska

A, a separate account as we talked about earlier, or in a segregated location of a clearance location depending on whether, you know, the relationship of the account.

Q. So it is correct to say that Mr. Ullman provided you to the best of your knowledge the list of accounts that included every account of Lehman other than safe custody or segregated accounts; is that correct?

A. Yes.

Q. That list was the basis on which you and Barclays created Exhibits A and B to the Cleary letter of March 6th; is that right?

A. That is correct.

Q. Scrolling down the depot column again do you see about two thirds of the way there is an entry to depot 097-00104-19?

A. I do.

Q. Do you know what that code is a reference to?

A. No.

Q. Do you know whether or not it is a reference to a location in the United Kingdom?

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A. I don't know.

Q. Three lines below that entry, sir, it reads LBI alternative physical security department, or sec dep?

A. Yes.

Q. Do you understand what that is a reference to?

A. Again it would be another description of a type of depository fund. The description written here would be a physical depository.

Q. Do you know where that physical depository is located, sir?

A. That specific one I couldn't say with certainty.

Q. Do you know whether it is a DTC or not?

A. I don't know.

Q. At the bottom of page there are three entries for a depot LBIE clearance and custody?

A. Yes.

Q. Do you see that, sir?

A. Yes.

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Hraska

Q. Do you know what that is a reference to?

A. It would have been a depository that LBI was holding that would have used in transactions that it did with one of its affiliates which was LBIE, that is the affiliate, but it is listed.

Q. So if I understand your testimony correctly LBI maintained a clearance box at LBIE?

MR. SHAW: No. Objection.

Mischaracterizes the prior testimony.

A. I am sorry, could you repeat the question.

Q. Could you explain to me again because I clearly misunderstood your last answer, how it is that the LBI clearance and custody depot first of all relates to Lehman's business prior to close?

A. This --

MR. SHAW: Objection to the form.

Just so we are clear when you say Lehman, it introduces an element --

Q. I am sorry, LBI?

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Hraska

A. Repeat the question.

Q. Can you tell me what the LBI clearance and custody depot is in the context of its appearance on this list?

A. Well this is LBIE, so there is a distinction there. So this is the -- the way this appears on this list, this would have been an account that LBI maintained related to transactions that it was -- that it had done for its -- or with its affiliate LBIE, which is Lehman Brothers International Europe.

Q. Would the account be held with LBI, sir, or LBIE?

A. The account would be held with LBI and it would have been an account called LBI for the customer LBIE.

Q. Coming back up the page five or six lines up from the LBIE reference, 097-00093-12?

A. Yes.

Q. Do you know what that is a reference to?

A. I don't know.

Q. Do you know whether or not that is

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a reference to a Euroclear account?

A. I don't. Is there a distinction between the two questions, like if you asked me and I say I don't know, then you ask me pretty much the same thing. I am not sure that I understand what the difference between the two questions is.

So if you ask me if I know what the account is and I say no and then you ask me if the zero clears, so if I say know the first time what is the distinction between the two questions. I am not trying to be sarcastic, I am trying to understand the difference between the two, maybe it is a legal distinction.

MR. SHAW: He is trying to see if he can refresh your recollection by suggesting what the answer might be.

Q. There is no finer legal point.

A. I will just keep answering no, but I am not trying to be difficult if I say no twice.

Q. I understand. We are all trying to get through it. I am trying to probe your

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recollection as your counsel suggests?

A. Fine.

Q. I realize I skipped over an entry, do you see two thirds of the way down the reference that we discussed to LBI alternative securities?

A. Yes.

Q. Three lines up from that is an entry 097 -- I did ask you about that, let's move on.

A. Okay.

Q. Flipping over the page do you see the entry --

MR. SHAW: Second page of Exhibit A to the Exhibit 156-B?

MR. OXFORD: Correct.

Q. You see the entry to restricted physical box at the top of the page?

A. Yes.

Q. Then there is a depot reference 097-00033-15?

A. Yes.

Q. Do you know what that relates to?

A. It would have related to a

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physical location that had legally restricted securities in there.

Q. Can you explain what you mean by legally restricted securities?

A. Securities that would have had -- I will say this as accurate as possible.

They would have needed additional legal documentation which is outside the normal scope of standard physical securities that are not restricted. So for instance a standard physical security just needs a bond power. A restricted security may need additional documentation in order to make it eligible for the delivery.

Q. When you asked Mr. Ullman to provide you with a list of eligible accounts, Mr. Hraska, did you intend to include in your request that he provide you with the list of such restricted accounts that you just told me about?

A. Well my intention was to not get any accounts that were safe kept. A restricted, although the term is restricted, doesn't necessarily mean that the firm doesn't

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1 Hraska
2 have access to use it. It just means that
3 there is a restriction beyond the normal
4 method for delivering a physical security
5 which again is related to the legal
6 requirements on attaching to that security
7 before making a delivery.

8 **Q. So you didn't mean to exclude**
9 **those types of accounts from your request to**
10 **Mr. Ullman?**

11 A. I didn't consider excluding them
12 or including them. I just meant to exclude
13 fully paid for.

14 **Q. Understand. The entry immediately**
15 **below that.**

16 A. Yes.

17 **Q. 097-00122-17?**

18 A. Yes.

19 **Q. Do you see that?**

20 A. I do.

21 **Q. Do you know what that is a**
22 **reference to?**

23 A. I am sorry, I don't.

24 **Q. Three lines down from that, sir,**
25 **097-00123-16, do you see that entry, sir?**

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1 Hraska

2 A. Yes.

3 **Q. Do you know what that is?**

4 A. I don't.

5 **Q. Do you know whether that is a**
6 **reference to a settlement account at Royal**
7 **Bank of Canada?**

8 A. I don't.

9 **Q. If you wanted to find out the**
10 **answer to the questions that I am asking you**
11 **about what these codes relate to how would you**
12 **go about doing that?**

13 A. There is two ways. Partially we
14 would have gotten an account list back, and I
15 would have to go back and see where that
16 account list is from the settlements team and
17 compare the accounts. The thing that I don't
18 recall is whether or not that list that we had
19 actually had descriptions on it or not. So to
20 the extent that it didn't we would have to go
21 back and find an original account list of LBI
22 clearance accounts and then cross reference
23 them. I am sure something like that exist, I
24 just don't have it.

25 **Q. A few lines down, sir, again on**

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1 Hraska
2 **page 2 of Exhibit A to the letter of March**
3 **2009 there is a reference to PIM conversion**
4 **omnibus?**

5 A. Right.

6 **Q. Can you tell me what that relates**
7 **to, sir?**

8 A. It would have been a conversion
9 account and it related to the PIM business as
10 opposed to the PAM business. I honestly don't
11 know the distinction between the two
12 businesses. I assume that they were somewhat
13 similar, but I don't know the distinction
14 between the two.

15 **Q. You do know, sir, that Barclays**
16 **assumed responsibility for only one of these**
17 **businesses, don't you?**

18 A. I don't. I know that they did not
19 assume responsibility of PAM. I don't know if
20 they assumed responsibility for PIM or not.

21 **Q. Is there anything about the**
22 **appearance on this list of the PIM conversion**
23 **omnibus that suggests to you that it may**
24 **contain customer securities?**

25 **MR. SHAW: Objection to the form.**

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1 Hraska

2 A. It may, it may not. I just --
3 without doing further research I wouldn't
4 know.

5 **Q. If you could turn to the ninth**
6 **page of Exhibit A, sir?**

7 A. Yes.

8 **Q. I have the first account number as**
9 **097-00027-13?**

10 A. For a quantity of 15,776 to the
11 right, next column over?

12 **Q. No, I have a different quantity.**

13 A. For a quantity of 426,183?

14 **Q. Yes.**

15 MR. SHAW: What is the name of the
16 first security in the second column on
17 the page you are looking at?

18 MR. OXFORD: Ermis Maritime
19 Holdings, E-R-M-I-S.

20 **Q. You see Mr. Hraska a few lines**
21 **down, ten lines down there is a reference**
22 **Euroclear?**

23 A. Yes.

24 **Q. The account is 097-00092-13?**

25 A. Okay.

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1 Hraska
2 **Q. Do you know what that is a**
3 **reference to?**
4 A. Yes, that would have been the LBI
5 Euroclear clearance account.
6 **Q. Just so we are clear, that is not**
7 **a DTC account?**
8 A. It is not a DTC account.
9 **Q. Anything with the designation**
10 **Euroclear relates to a LBI account at**
11 **Euroclear as it appears in the depot column**
12 **here, is that a fair assumption?**
13 A. Yes.
14 **Q. Three below Euroclear, sir, there**
15 **is a reference to an account 097-00097-18?**
16 A. Okay.
17 **Q. Do you know what that is a**
18 **reference to?**
19 A. I don't know.
20 **Q. Do you know whether or not it is a**
21 **reference to a settlement account at Paribas**
22 **in Germany?**
23 A. I do not.
24 **Q. Six lines down from that there is**
25 **a reference to a depot number 097-00105-18?**
TSG Reporting - Worldwide 877-702-9580

1 **Hraska**
2 A. Yes.
3 **Q. Do you see that?**
4 A. Yes.
5 **Q. Do you know what that is a**
6 **reference to?**
7 A. No.
8 **Q. Do you know whether or not that is**
9 **a reference to a UK settlement account?**
10 A. I do not.
11 **Q. Further five lines down there is a**
12 **reference to 097-00167-13, do you see that,**
13 **sir?**
14 A. Yes.
15 **Q. Do you know what that is a**
16 **reference to?**
17 A. I do not.
18 **Q. You don't know whether or not that**
19 **is a reference to a Citibank account in Peru?**
20 A. I do not.
21 MR. OXFORD: Off the record for a
22 second.
23 (Recess taken.)
24 **Q. Sticking on the same page we were**
25 **discussing, Mr. Hraska, page 9?**
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1 **Hraska**
2 A. Yes.
3 **Q. Third of the way down there is a**
4 **reference to BNP Paribas France?**
5 A. Yes.
6 **Q. Do you know what that is a**
7 **reference to?**
8 A. A clearance account held at BNP
9 Paribas.
10 **Q. That is again not an account held**
11 **at DTC?**
12 A. That is not an account held at
13 DTC.
14 **Q. Six lines down, sir, do you see**
15 **there is a reference to physical escrow**
16 **receipts held?**
17 A. Yes.
18 **Q. Can you explain to me what that is**
19 **a reference to?**
20 A. It is a physical location, again a
21 depot for physical securities of the escrow
22 type.
23 **Q. Do you know the location of that**
24 **depository?**
25 A. I don't.
TSG Reporting - Worldwide 877-702-9580

1 **Hraska**
2 **Q. Finally if you could turn three**
3 **more pages, sir, Exhibit A, takes us to page**
4 **12. So we have a clear record I have the**
5 **first CUSIP name in column 2 at the top of my**
6 **page is Solution Net International?**
7 A. Yes.
8 **Q. Do you have that page?**
9 A. Yes.
10 **Q. About a third of the way down**
11 **there is a reference to a Lehman Brothers**
12 **account which starts 097-0093-12, Lehman**
13 **Brothers, do you see that?**
14 A. Yes.
15 **Q. Do you know what that is a**
16 **reference to?**
17 A. I don't know.
18 **Q. Do you know whether or not that is**
19 **a reference to a location where collateral**
20 **that had been seized by Bank of New York was**
21 **located?**
22 A. I don't know.
23 **Q. Is that account in DTC, sir?**
24 A. I don't know.
25 **Q. That is all the questions I have**
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1 **Hraska**
2 **on this exhibit. Did you want to take a short**
3 **break?**

4 A. Yes. That would be great, thanks.

5 MR. OXFORD: Off the record.

6 (Recess taken.)

7 **Q. Are you ready, everybody ready to**
8 **go back on?**

9 A. Sure.

10 **Q. Mr. Hraska, I have placed in front**
11 **of you what I have marked as Exhibit 561-D,**
12 **which I will identify for the record as the**
13 **native file of a document that was produced to**
14 **us last night by Boise Schiller, which I**
15 **understand to be another version of Exhibits A**
16 **and B to the Cleary letter with some**
17 **additional analysis.**

18 **Jonathan, does that comport with**
19 **your understanding of what this purports to**
20 **be?**

21 MR. SHAW: Are you asking whether
22 it is list A and list B1; that was one of
23 the things that we sent you last night,
24 but looking at the spreadsheet I couldn't
25 tell you which it was.

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1 **Hraska**

2 **Q. Looking at the covering E-mail**
3 **from last night it appears to be a version of**
4 **list A and B1 that was produced to us last**
5 **night.**

6 A. Okay.

7 **Q. Mr. Hraska, could you turn to the**
8 **section of the document that appears after the**
9 **last blue sheet?**

10 MR. SHAW: The last blue sheet?

11 MR. OXFORD: Yes.

12 A. There are multiple blue sheets.

13 **Q. I have two.**

14 A. Got to find it. There we go, yes.

15 **Q. Just so we are sure we are on the**
16 **same page, the first CUSIP that appears in the**
17 **description of the page that I am looking at**
18 **is New York NY City Transitional, are we on**
19 **the same page?**

20 A. Yes.

21 **Q. First of all do you know the**
22 **document I have marked as Exhibit 561-D, do**
23 **you know what it is?**

24 A. Yes, I do.

25 **Q. Can you tell me what it is,**

TSG Reporting - Worldwide 877-702-9580

1 **Hraska**
2 **please, sir?**

3 MR. SHAW: Are you talking about
4 the entire document or just that piece?

5 **Q. Generally do you know what the**
6 **document is?**

7 A. Yes.

8 **Q. Can you tell me what it is,**
9 **please, sir?**

10 A. Yes. It would have been what
11 was -- what has been referred to as list A and
12 B1. I am sorry, you are asking me overall or
13 just this particular section. Overall you
14 asked me?

15 **Q. Yes. Overall?**

16 A. Yes. So overall it would have
17 been both of those.

18 **Q. It appears on my copy that there**
19 **are three sections to this each divided by a**
20 **blue sheet. If you could look at the first**
21 **page and tell me what that is, please, sir?**

22 A. Yes.

23 **Q. There is a reference to sheet A at**
24 **the top left-hand corner?**

25 A. So now we are at --

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1 **Hraska**

2 MR. SHAW: No, here (indicating).
3 Very first page of 561-D.

4 A. Okay. So what was the question?

5 **Q. Were you involved in creating this**
6 **page, sir?**

7 A. No, I was not.

8 **Q. Do you know who was?**

9 A. I do not.

10 **Q. Have you seen it before?**

11 A. I have seen it before, but I was
12 not involved in creating it.

13 **Q. In what context did you see it,**
14 **sir?**

15 A. I saw it in preparation for this
16 deposition.

17 **Q. Can you explain to me what the**
18 **first page of 561-D represents?**

19 A. No, I cannot.

20 **Q. Do you know who did create this?**

21 A. Specific person; I don't know.

22 **Q. Do you have an understanding of**
23 **the process by which it was created?**

24 A. No.

25 MR. SHAW: Again with those last

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Hraska

questions were only focussed on the first page?

MR. OXFORD: Correct.

Q. If you could turn to the second attachment to that first page, sir, after the second blue sheet, the page we first looked at it has the description in the first CUSIP column, or row rather, of New York City NY Transition?

A. Yes.

Q. Are you at that page?

A. Yes.

Q. I am going to ask you a series of questions about the depot locations that appear across the top of the page.

A. Okay.

Q. Do you see there is a column entitled Schedule B Quantities?

A. Yes.

Q. About a third of the way along?

A. Yes.

Q. Is it accurate to say that the list of numbers that follow as you read along the page left to right are depot numbers?

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Hraska

A. From left to right across the top of the page?

Q. Yes.

A. Yes. Those would be depot numbers, yes.

Q. Taking each of these in turn can you tell me what they relate to; can you tell me what the first depot 0007-03, do you know what that relates to?

A. I do not.

Q. Do you know what the next one relates to, the one that ends in 7-11?

A. That would have been DTC.

Q. Skipping across to the fourth entry after that, 097-0033-15, do you know what that is?

A. I do not.

Q. Same question for the next entry, 097-00074-15?

A. I do not.

Q. Do you know whether the next two entries that end in 13 and 12 are Euroclear accounts?

A. I do not.

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Hraska

Q. 097-00099-16, do you see that, sir?

A. I do.

Q. You don't know what that is a reference to?

A. I do not.

Q. Then the next four entries, sir, to the right of the one ending 16 that I just asked you about, do you know what those are a reference to?

A. Sorry, I do not.

Q. If you could read along then to the second to last entry in the list of numbers across the top of the page, 097-00183-13, do you know what that is a reference to?

A. I do not.

Q. Were you involved in preparing the spreadsheet that appears after the second blue page here, the one that we have just been talking about, sir?

MR. SHAW: You mean preparing the physical spreadsheet or --

Q. Start with that.

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Hraska

A. Let me ask you. I was not involved in preparing this specific version you see before you here, but I was involved in preparing data that became this spreadsheet that you see in front of you as the exhibit.

Q. Do you know who prepared this particular spreadsheet?

A. Specific person; no.

Q. Do you know the group of individuals who were involved in preparing this spreadsheet?

A. This particular version; it would have been Barclays finance group.

Q. Is there a particular person you can identify in Barclays finance group that was involved in or responsible for the creation of this document?

A. I think there were multiple people involved. I would be speculating as to who specifically created this spreadsheet themselves.

Q. You said there were multiple people involved --

A. There were people, a lot of people

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1 Hraska
2 reviewing the data in finance. So I don't
3 know who ultimately created this version that
4 you are looking at today.

5 **Q. Can you list for me the people in**
6 **finance who were involved in reviewing the**
7 **data?**

8 A. One of the people that I dealt
9 with was Sean Teague.

10 **Q. Any others?**

11 A. That was my primary contact. Then
12 there were others, I just don't recall the
13 names.

14 **Q. What was your involvement, sir, in**
15 **preparing the data that is reflected in the**
16 **spreadsheet that we have just been looking at?**

17 A. My involvement was gathering the
18 original source data and creating rules that
19 would have selected securities that were
20 deemed to be not fully paid for assets, and
21 working with some folks in treasury to create
22 a spreadsheet which applied those rules and
23 gave back a data set which we then distributed
24 to the treasury group.

25 **Q. Generally speaking, sir, is that**

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1 Hraska
2 **process that you have told me about in your**
3 **last answer, is that the same process that is**
4 **reflected in the notes to your 30(b)(6)**
5 **deposition?**

6 A. Yes. So if in this particular
7 case this is B1. If we wanted to go to the
8 section on B1 we could talk through that
9 process if you want.

10 **Q. Okay. We will get to that in a**
11 **second, but that is a useful orientation. The**
12 **spreadsheet, the last spreadsheet that appears**
13 **as part of Exhibit 561-D, you just described**
14 **that as list B1; is that correct?**

15 A. I believe this to be B1. I think
16 it was entered into, into the records as A and
17 B1.

18 **Q. Which records are you referring**
19 **to, sir?**

20 A. This document, right, is A and B1
21 in its entirety; right?

22 **Q. It is not my document, sir, so I**
23 **can't really tell you that.**

24 A. Yes. This is A and B1.

25 **Q. I was hoping you could.**

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1 Hraska
2 A. I am sorry, I thought we said that
3 already.

4 **Q. So we have a clear record, is it**
5 **your testimony, sir, that the second section**
6 **of the document that appears after the first**
7 **blue page is list A?**

8 A. Second document would be list B1.

9 MR. SHAW: No, no. You are
10 getting confused. After the first blue
11 page?

12 A. Okay. The first blue page would
13 be list A.

14 **Q. After the second blue page appears**
15 **list B1?**

16 A. That is correct.

17 **Q. Those descriptions of list A and**
18 **list B1 are referenced in -- withdrawn.**

19 When you reference in your
20 deposition notes, 562-D, list A and list B1,
21 the lists that I have marked as Exhibit 561-D,
22 those are the lists that we are discussing?

23 A. Yes, correct.

24 **Q. Just a couple more questions. But**
25 **list B1, do you see, sir, looking at the top**

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1 Hraska
2 **of the page a column description I believe it**
3 **is the eighth column along that reads Sched B**
4 **Quantities?**

5 A. Yes, I do.

6 **Q. Can you tell me what that is a**
7 **reference to, please?**

8 A. That is a reference to quantities
9 of securities that were part of what is known
10 as Schedule B.

11 **Q. When you reference Schedule B in**
12 **that context, sir, can you be specific about**
13 **what you are talking about?**

14 A. Schedule B would have been the
15 schedule which was part of the purchase
16 agreement.

17 **Q. Is it a reference to the version**
18 **of Schedule B that was used at the closing of**
19 **the transaction on September 22, 2008?**

20 A. Yes.

21 MR. SHAW: Objection. Foundation.

22 **Q. What is the basis for the last**
23 **answer you just gave me, sir?**

24 A. I only know there to be one
25 Schedule B.

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Hraska

Q. To your knowledge, sir, was the version of Schedule B ever filed with the Bankruptcy Court in this case?

A. Schedule B filed with the Bankruptcy Court?

Q. Yes.

A. Yes, I believe it was.

Q. And is that the same Schedule B to your knowledge that is referenced in list B1?

A. To my knowledge yes.

Q. Was there any analysis underlying the data that appears under the column Schedule B Quantities?

A. By analysis can you be more specific?

Q. Maybe I could ask it this way.

A. Is this 32-C in the question, is that --

Q. No, I have a more general question first.

A. Okay.

Q. Can you explain to me why there is a column entitled Schedule B Quantities in list B1?

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Hraska

A. Yes. The finance group wanted to compare the assets that were retrieved by this exercise versus assets that would have appeared on the original Schedule B.

Q. How did you come to learn, Mr. Hraska, that the finance group wanted to compare the assets that were retrieved by the exercise that you described to the assets that appeared on the original Schedule B?

A. I basically when I had seen a -- I had seen a copy of this at one point and I had actually questioned what that reference was there. That is what I was told.

Q. Who did you ask about that reference?

A. I don't recall. It would have been a meeting with the finance folks.

Q. Can you tell me the names of the finance folks who would have been at that meeting?

A. Again my primary contact for most of this stuff from the finance perspective would have been Sean Teague.

Q. You referenced a meeting that you

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Hraska

would have had with the finance folks. On the finance side who else would have been at that meeting or those meetings with Sean Teague?

A. I don't recall. Probably sometime ago now.

Q. Did anybody explain to you why the finance group wanted to compare the assets that were retrieved or identified by the exercise culminating in List B1 and stay with the assets that were on the original Schedule B?

A. Yes. We were trying to identify all assets which were not fully paid for in the clearance boxes and we wanted to see if there were assets -- these exercises were to see if there were additional assets which had not been previously identified.

Q. You gained that understanding, sir, from your conversation with a person in finance who may have been Sean Teague?

A. May have been Sean Teague, yes.

Q. Can you explain to me then, sir, what it means when there is an entry on either List A or List B1 under the heading Schedule B

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Hraska

Quantities?

A. This would have been the quantity that appeared on Schedule B as filed with the court that you referenced earlier.

Q. The Schedule B you are referencing is to your knowledge the version of Schedule B that was filed with the Bankruptcy Court?

A. Yes.

Q. If there is no entry or a dash in Lists A and B1 under the heading Schedule B Quantities what does that indicate to you?

A. That indicates to me that that particular security when this exercise, this comparison exercise was done it was not found on Schedule B.

Q. Do you know who performed the comparison exercise between the securities on Lists A and B1 with the securities on Schedule B?

A. I do not.

Q. If you had to find out the answer to that question who would you ask?

A. I would start with Sean Teague.

Q. Do you have any reason to believe

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1 Hraska

2 **this analysis of the securities on Lists A and**
3 **B1, and the securities on the original**
4 **Schedule B filed with the Bankruptcy Court is**
5 **inaccurate?**

6 A. The data is as accurate as it can
7 be based off of what data set we had available
8 and we applied the rules to it. As to its
9 accuracy I couldn't say.

10 **Q. Could you have in front of you,**
11 **please, what I have marked as Deposition**
12 **Exhibit 562-D?**

13 A. Yes.

14 **Q. Could you tell me what those are?**

15 A. These are my notes that I made in
16 preparation for this deposition.

17 **Q. What did you do to prepare for**
18 **this deposition other than write these notes?**

19 A. I reviewed the questions. I went
20 back through historical E-mails. I looked at
21 some of the spreadsheets that were created. I
22 looked at the spreadsheets that -- the final
23 spreadsheets that operations and treasury
24 worked on together and that had submitted
25 forwarded. I wanted to refresh myself with

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1 Hraska

2 some of the pivot tables and macros and some
3 of the spreadsheet methodology that kind of
4 contained the rules that we held, and how we
5 wrote those rules into the look ups and
6 macros.

7 To do that I met with a gentleman
8 by the name of Colin Telmer, T-E-L-M-E-R. And
9 we just reviewed kind of the methodology and
10 reviewed how the spreadsheets worked. Then I
11 met with counsel as well to --

12 MR. SHAW: Don't talk about
13 anything involving your meetings with us.

14 **Q. Was counsel present when you were**
15 **meeting with Mr. Telmer?**

16 A. No.

17 **Q. Can you tell me as precisely as**
18 **possible what it is that you reviewed with Mr.**
19 **Telmer?**

20 A. We reviewed the data set and the
21 rules that we applied, and how the pivots and
22 look ups in the spreadsheet itself worked.

23 **Q. Which data set are you referring**
24 **to, sir?**

25 A. Our original data set for this was

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1 Hraska

2 the TMS stock record, and it would have been
3 as of November 17th date, and --

4 **Q. That is November 17, 2008?**

5 A. Yes.

6 **Q. TMS stands for Trade Management**
7 **System?**

8 A. Yes.

9 **Q. The rules that you reviewed with**
10 **Mr. Telmer, are those the rules that are**
11 **generally described in your deposition notes,**
12 **562-D?**

13 A. No. The -- well we reviewed these
14 rules, but my focus with Mr. Telmer was more
15 so how the spreadsheet applied these rules to
16 the data set. So he is more of the
17 spreadsheet expert with pivots and look ups
18 and things, those are spreadsheet functions.

19 **Q. When you say the spreadsheet, sir,**
20 **what are you referring to?**

21 A. There were spreadsheets which
22 analyzed the data that we took from the TMS
23 stock record. So the spreadsheets I am
24 referring to are the original spreadsheets
25 that we used as having the raw data and the

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1 Hraska

2 application of the rules that I described here
3 in the notes.

4 **Q. Why is it you met with Mr. Telmer**
5 **in particular, why him?**

6 A. Because based on the questions
7 themselves I was -- I wanted to be as
8 knowledgeable as I could about -- if I was
9 looking at the spreadsheet itself, you know,
10 how in particular number 1 how it was
11 organized and also how it appeared and why the
12 data appeared that way on the spreadsheet.

13 **Q. Again you are referring to a**
14 **particular spreadsheet or a set of**
15 **spreadsheets generally?**

16 A. There were spreadsheets that Mr.
17 Telmer and I worked on which were the basis of
18 what we concluded the positions were, and
19 those spreadsheets were sent to finance and to
20 treasury, and data from those spreadsheets in
21 various forms have been, you know, cut, paste.
22 I referenced earlier that the spreadsheet that
23 we saw there was work that came from work that
24 Mr. Telmer and I had done, but that particular
25 version was not the spreadsheet specifically

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1 Hraska
2 topic by topic?

3 A. Okay.

4 Q. Topic 32, Schedule B to the
5 clarification letter including A, the origin
6 of Schedule B, including who compiled it.

7 Do you see that section, sir?

8 A. Yes.

9 DI Q. Did you prepare these notes by the
10 way?

11 MR. SHAW: The notes were prepared
12 through a process that involves
13 privileged communication and we are not
14 going to go into it.

15 Q. Are these notes accurate to the
16 best of your knowledge, sir?

17 A. Yes.

18 Q. Under topic A it says, in your
19 notes, Schedule B was referenced in the
20 clarification letter and represented the
21 party's best effort, based on the information
22 available at the time, to list the quote,
23 clearance box, quote, securities that Barclays
24 was entitled to receive.

25 It goes on to say because there

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1 Hraska

2 was imperfect information when Schedule B was
3 filed with the court the parties agreed that
4 Barclays retain its right to amend or
5 supplement that list.

6 Do you see that?

7 A. Yes, I do.

8 Q. Can you tell me please as Barclays
9 30(b)(6) witness on this topic which
10 individuals on behalf of Lehman agreed that
11 Barclays retained its right to amend or
12 supplement that list?

13 MR. SHAW: A joint motion filed
14 with the court.

15 A. I wouldn't --

16 MR. OXFORD: Are you testifying?

17 MR. SHAW: I am letting you know
18 that, you know --

19 A. I don't know who on Lehman's
20 behalf agreed to retain the rights.

21 Q. Do you know who agreed on
22 Barclays' behalf?

23 A. I don't know.

24 Q. Do you know whether there was any
25 such agreement at the time of the closing on

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1 Hraska
2 September 22nd?

3 A. It has been referenced there was
4 an agreement. I wasn't part of the closing on
5 September 22nd, I didn't witness that
6 agreement.

7 Q. But, sir, you are Barclays'
8 30(b)(6) witness and your 30(b)(6) deposition
9 notes --

10 A. It is my understanding there was
11 an agreement.

12 Q. But you are not able to tell me
13 who in particular was a party to that
14 agreement, sir?

15 A. No.

16 Q. Do you know whether there is any
17 such agreement reflected in the clarification
18 letter, sir?

19 A. I don't know, but I would have to
20 review the clarification.

21 Q. I believe you have in your
22 document set Exhibit 25?

23 A. Okay.

24 Q. You have seen this document
25 before, sir, correct?

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1 Hraska

2 A. I have, yes.

3 Q. Are you familiar, sir, with the
4 section in this document that references the
5 Schedule B that is the topic of your 30(b)(6)
6 deposition?

7 A. Could you repeat the question.

8 Q. The section of the clarification
9 letter that deals with Schedule B that is the
10 topic of your 30(b)(6) deposition today?

11 A. Yes, I would want to review it
12 again.

13 Q. Please do so as you need and let
14 me know when you have done it.

15 MR. SHAW: You want to tell him
16 which parts of the letter you want to
17 look at?

18 MR. OXFORD: Yes.

19 Q. I believe the only section of this
20 letter that references Schedule B is clause
21 1-A (ii) under purchased assets on page 1
22 which spills over to the first few lines of
23 page 2.

24 A. All right.

25 Q. Have you had a chance to conduct a

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Hraska

sufficient review of Exhibit 25, sir?

A. Yes, I have.

DI Q. Can you tell me, sir, as Barclays' 30(b)(6) witness whether there is any -- anywhere reflected in the clarification letter any agreement between the parties that Barclays retained any right to amend or supplement Schedule B?

MR. SHAW: Objection. Beyond the scope of the 30(b)(6) testimony. He is not here to testify about the content or meaning of the clarification letter. As I already indicated to you the agreement in question was contained in a joint motion filed with the court and not the clarification letter.

Q. Do you have the question in front of you, sir?

A. Could you read it back.

(Record read.)

MR. SHAW: I continue to object. Beyond the scope of the 30(b)(6) designation and I am going to instruct him not to answer this question as

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Hraska

Barclays witness. If you want to ask him that question in his personal capacity you are welcome to do so.

Q. Well, we can disagree or agree on the scope of the notice, but I will ask it in the witness' personal capacity.

Do you have the question in front of you, sir?

A. Read it back.

(Record read.)

A. From the review of this document it does not appear there to be any agreement in that section.

Q. Or any other section that you can see today, sir?

A. Well I only reviewed that section.

Q. Moving further down your notes, sir, again under topic 32-A, you say that Schedule B was compiled by many people including -- and then you List A number of names here?

A. Yes.

Q. Can you tell me, please, for each of them in turn who they were employed by

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Hraska

prior to the closing of the deal on September 22nd and what their role was in compiling Schedule B?

A. Sure. Anthony Crispino employed by Lehman Brothers was a clearance representative. William -- let me go back to Anthony Crispino. He provided data as to the depot accounts along with -- depot accounts is enough.

William Parrinello was a technologist whose specialty was in the GFS system. Myself also employed by Lehman Brothers who worked interpreting the data once retrieved. Nancy Denig who also worked at Lehman Brothers who works in my organization also to do interpretation work and spreadsheet work.

Paolo Tonucci also at Lehman Brothers was the recipient of the data from the treasury group. Robert Azerad at Lehman Brothers, worked for Robert Azerad at treasury, also a recipient of data, as well as reviewing the data and providing the spreadsheets. And the legal, the gentleman

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Hraska

from Weil, Gotshal, I am not sure what their role was.

Q. You write that Schedule B was compiled by many people including the list of people that you named here. Do you know whether there were any other people involved in the compilation of Schedule B?

A. How broad are you defining involved; the primary people for its genesis are listed. There may have been other people who worked in the organizations for these people who either reviewed a portion or made suggestions or something like that. But beyond the scope of the list of people listed here I wouldn't know who these people might have instructed somebody else to look at.

Q. That is understood.

A. Yes.

Q. Can you give me more information on the interpretation work that Nancy Denig did in the compilation of Schedule B?

A. She was primarily my spreadsheet mechanic. She is -- I am an average spreadsheet user, she is a much better

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1 Hraska
2 spreadsheet user with results around pivoting
3 and macro'ing, and sorting and filtering.

4 **Q. That doesn't sound like**
5 **interpretation work to me. I asked you about**
6 **the interpretation work that Nancy Denig did?**

7 A. So then I would say that that
8 is -- that was an incorrect description then.
9 She would have taken the spreadsheet, I would
10 have asked her for specifics -- series of data
11 and she would have filtered it out and
12 provided that.

13 **Q. Yes.**

14 A. She was also familiar with -- she
15 was very familiar with the GFS system and we
16 were using that as a primary search tool. So
17 William Parrinello, Nancy and myself were
18 working to create the rules to pull data using
19 the GFS system.

20 **Q. I think you testified that**
21 **Mr. Tonucci and Mr. Azerad were recipients of**
22 **did data, do you remember that testimony?**

23 A. Yes, I do.

24 **Q. In your notes you list both of**
25 **those individuals as people who were involved**

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1 Hraska
2 **in compiling Schedule B. Can you tell me what**
3 **the role was of Mr. Tonucci in compiling**
4 **Schedule B?**

5 A. He had primarily instruction to
6 look for clearance box assets came from Mr.
7 Tonucci. So it was at his direction that we
8 were doing it. So I interpreted that to be
9 that he was involved in compilation work.

10 **Q. Is it accurate to say that Mr.**
11 **Tonucci wasn't involved in the gathering or**
12 **analysis of data to your knowledge?**

13 A. I would say he was not involved in
14 the gathering of data. I believe he was
15 heavily involved in the analysis of data.

16 **Q. Tell me what you recall or rather**
17 **tell me what you know about Mr. Tonucci's**
18 **instruction to look for clearance box assets?**

19 A. He had requested us to look for
20 assets which were not segregated or fully paid
21 for which could be -- which could be delivered
22 to Barclays if requested as part of the
23 purchase agreement.

24 **Q. When did Mr. Tonucci issue that**
25 **request to you?**

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1 Hraska
2 A. He didn't issue it directly to me.
3 He would have issued it to Alister Blackwell.
4 I would have been on call subsequent to that
5 where he would have been describing what his
6 request was. But that would have been -- I am
7 not certain the time it would have been I
8 believe on that Saturday. I believe that is
9 the 20th of September.

10 **Q. Did Mr. Tonucci issue a -- or**
11 **request Mr. Blackwell gather a specific amount**
12 **of non-segregated or non-fully paid for assets**
13 **that could be delivered to Barclays?**

14 A. I believe we were looking for a
15 target of approximately 1.9 billion.

16 **Q. Who was that target set by, sir?**

17 A. From my perspective Mr. Tonucci.
18 I don't know who agreed or who set it.

19 **Q. It is from your perspective Mr.**
20 **Tonucci, how do you know that?**

21 A. Because we were asked to find the
22 clearance box assets and we were asked to find
23 at least 1.9 billion of them.

24 **Q. Was it Mr. Blackwell who asked you**
25 **to find at least 1.9 billion of assets that**

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1 Hraska
2 **could be delivered to Barclays?**

3 A. I mean Mr. Blackwell would have
4 sent a communication down to me. I don't know
5 whether it would have been to join a meeting
6 to discuss it or he directly told either
7 myself or Mr. Forest who I worked for to send
8 that message down to us. At the end of the
9 day I mean the instruction came from Mr.
10 Tonucci. So specifically who gave it to me I
11 don't recall.

12 **Q. You don't list any Barclays**
13 **personnel as involved in the compilation of**
14 **Schedule B; is that correct?**

15 A. That is correct.

16 MR. SHAW: A point of
17 clarification, you mean --

18 MR. OXFORD: Is it correct --

19 MR. SHAW: You mean preclosing
20 Barclays employees or --

21 MR. OXFORD: We are going to get
22 there.

23 A. Could you repeat the question
24 again.

25 **Q. Focusing on the timeframe prior to**

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1 Hraska

2 closing?

3 A. Prior to closing, okay.

4 Q. Were any employees of Barclays or
5 representatives of Barclays involved in the
6 compilation of Schedule B?

7 A. In the compilation of Schedule B,
8 I would -- not to my knowledge.

9 Q. Focusing on the timeframe between
10 the closing on the 22nd of September and
11 September 30, 2008 do you know whether any
12 employee of Barclays, including legacy Lehman
13 employees who transferred to Barclays, worked
14 on the compilation of Schedule B?

15 A. Yes.

16 Q. Are those Barclays employees the
17 former Lehman employees that are listed in
18 paragraph 2 of your notes?

19 A. Yes.

20 Q. Are there any others?

21 A. Not that I am aware of, no.

22 Q. Does Barclays have any knowledge,
23 sir, about the role if any of the Weil,
24 Gotshal firm in the compilation of Schedule B
25 at any time?

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1 Hraska

2 A. I would say yes.

3 Q. What is that knowledge, sir?

4 A. I don't know what that knowledge
5 is, but as a matter that Barclays is entitled
6 to and has possibly reviewed previous E-mails,
7 you know, regarding any of these testimonies,
8 I would have to think that that firm's name or
9 references to Schedule B would have come up.

10 Q. Your 30(b)(6) deposition notice
11 includes the topic the origin of Schedule B
12 and who compiled it; correct?

13 A. Right, and the reason -- okay,
14 yes.

15 Q. Your notes reflect the involvement
16 of the Weil, Gotshal firm including David
17 Murgio, M-U-R-G-I-O?

18 A. Yes.

19 Q. You have testified on behalf of
20 Barclays, Barclays believes that the Weil,
21 Gotshal firm is involved in the compilation of
22 Schedule B; is that correct?

23 A. Yes.

24 Q. Can you tell me, please, as
25 Barclays representative what the involvement

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1 Hraska

2 is Barclays says Weil, Gotshal had in the
3 compilation of Schedule B?

4 A. In my review for this I saw that
5 there was an E-mail that Weil, Gotshal was --
6 on which discussed some of the components of
7 Schedule B, which is why I included them on
8 this.

9 Q. What is the date of that E-mail?

10 A. I don't recall.

11 Q. Can you give me an approximate
12 date?

13 A. Can I give you a range?

14 Q. Yes, a range would be a good
15 start?

16 A. The 22nd to the 30th of September.

17 Q. The E-mail was from whom and to
18 whom?

19 MR. SHAW: If you recall?

20 A. I honestly don't recall. I
21 reviewed -- I honestly don't recall.

22 Q. Was either the sender or the
23 recipient an employee of the Weil, Gotshal law
24 firm?

25 A. Yes. It would have been David

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1 Hraska

2 Murgio who is listed probably.

3 Q. The basis for your testimony about
4 Weil, Gotshal's involvement, is it just this
5 one E-mail or are there any other documents?

6 A. The basis of my testimony was
7 based on that E-mail.

8 Q. Are you aware of any other
9 documents as Barclays representative that form
10 the basis of Barclays's belief that the Weil,
11 Gotshal law firm was involved in the
12 compilation of Schedule B?

13 A. I am not aware from the documents,
14 no.

15 Q. What can you tell me, sir, about
16 the content of the E-mail that is the basis
17 for your testimony for Barclays that Weil,
18 Gotshal was involved in the compilation of
19 Schedule B?

20 A. If I recall it was a discussion
21 of -- it was a discussion of the assets and I
22 remember there was a discussion about the
23 assets, there was a distinction as to
24 different assets and potentially their
25 locations. But beyond that I don't remember

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1 Hraska

2 the details.

3 Q. Turning to topic 32-B, sir?

4 A. Yes.

5 Q. Was it your intention in compiling
6 Schedule B to exclude any fully paid customer
7 or affiliate securities?

8 A. Yes.

9 Q. Do you believe that was the
10 intention of all of the individuals who you
11 have testified were involved in compiling
12 Schedule B?

13 A. Yes.

14 Q. Did someone issue to you a
15 direction to exclude any fully paid customer
16 or affiliate securities from Schedule B?

17 A. Yes, that would have been Paolo.

18 Q. Do you agree with me, sir, that if
19 any fully paid customer or affiliates were
20 accidentally included on Schedule B, they
21 should be removed from that list?

22 MR. SHAW: Objection. Calls for a
23 legal conclusion. Beyond the scope of
24 the 30(b)(6).

25 Q. Was it the intention, sir, in

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1 Hraska

2 compiling Schedule B that only unencumbered
3 assets in Lehman's clearing box be included?

4 A. Yes.

5 Q. Can you tell me please what you
6 mean by the term or understand by the term
7 unencumbered assets?

8 A. Assets which would have been fully
9 paid for by a -- I am sorry, assets which were
10 not fully paid for by a customer.

11 Q. If assets had been pledged by
12 Lehman for example as part of a bank loan,
13 would those assets be eligible to your
14 understanding for the inclusion in Schedule B?

15 A. It would have depended on whether
16 the pledge itself was carried out in a manner
17 which would have reflected on the stock record
18 that it was a segregated account versus a
19 non-segregated account. Had it been placed in
20 a segregated account they would have been
21 excluded from Schedule B.

22 Q. If it was pledged but not placed
23 in a segregated account it would have been
24 included in Schedule B?

25 A. If the securities would have been

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1 Hraska

2 in an account which would have appeared on the
3 stock record as unsegregated, then it would
4 have appeared on Schedule B.

5 Q. Did you understand the direction
6 from Mr. Tonucci to identify approximately 1.9
7 billion of assets in the Lehman clearing boxes
8 to include a direction to search for assets
9 that Lehman had pledged but not segregated?

10 A. Could you be more specific on
11 pledged?

12 Q. I am not sure I can. Can you be
13 more -- can you answer my question like that?

14 A. Well Schedule B as referenced here
15 was the composition of two components. One
16 which were securities which were pledged to
17 the Bank of New York for the benefit of
18 Barclays. Those assets were skill in Lehman's
19 clearance boxes, but were pledged for the
20 benefit of Bank of New York. And then the
21 second component of that would have been the
22 work that was done around the review of the
23 stock record using GFS which would have
24 yielded securities in accounts which were in
25 non-segregated locations.

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1 Hraska

2 Q. Was it your intention, sir, to
3 include both of those categories of assets in
4 Schedule B, or only one?

5 MR. SHAW: Asked and answered.

6 Q. Was it your intention, sir, to
7 include on Schedule B the assets that Lehman
8 pledged on Friday the 19th of September?

9 A. The original exercise was to look
10 for assets which were purely on the Lehman
11 stock record as unencumbered. We were later
12 instructed by Mr. Tonucci to also include
13 these assets which were pledged on the 19th as
14 well as part of Schedule B.

15 Q. When did that instruction to
16 include the pledged assets from September 19th
17 come from Mr. Tonucci?

18 A. I don't have a specific time, but
19 it would have been in the latter part of that
20 weekend.

21 Q. So before the closing of the
22 transaction?

23 A. Yes, correct.

24 Q. If a security was pledged by
25 Lehman as part of a bank loan but not placed

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1 **Hraska**
2 **in the segregated account did you understand**
3 **Mr. Tonucci's direction to you, you or**
4 **Mr. Blackwell, to include such a security on**
5 **Schedule B or exclude it from Schedule B?**

6 MR. SHAW: Objection to the form.

7 A. His direction was never specific
8 about securities which were pledged on bank
9 loan or not. The first part of the direction
10 was to include assets as I testified which
11 were not fully paid for. Later the direction
12 was to add to the list that we had already
13 created the securities which were pledged on
14 the 19th. As to why I don't remember.

15 **Q. When you were creating the**
16 **Schedule B prior to closing or were involved**
17 **in the process that led to the creation of**
18 **Schedule B prior to closing, did you include**
19 **assets that Lehman had pledged as part of a**
20 **bank loan but had not placed in a segregated**
21 **account?**

22 MR. SHAW: You mean other than as
23 stated in the sentence you are focusing
24 on, or just that?

25 **Q. My question was without reference**
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1 **Hraska**
2 **to any sentence?**

3 A. To the best of my knowledge it
4 would have not included that. It would not
5 have included securities that were pledged to
6 bank loans by the definition of the rules
7 applied to the search.

8 **Q. Can you be more specific about**
9 **that?**

10 A. To specify that, if something was
11 pledged for the purposes of a specific bank
12 loan, typically a transaction like that would
13 be in an account that was fully segregated.
14 So by our rules of not including fully
15 segregated accounts we wouldn't have
16 anticipated to pick up any assets that were
17 part of a bank loan transaction.

18 **Q. If for some reason there were in**
19 **the accounts that you were looking at under**
20 **the rules you just testified to securities**
21 **that were pledged for a bank loan, do you have**
22 **an understanding of whether or not those**
23 **securities should be included on Schedule B or**
24 **excluded from Schedule B?**

25 MR. SHAW: Objection. Calls for a
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1 **Hraska**
2 legal conclusion. Incomplete
3 hypothetical.

4 A. So do I answer?

5 MR. SHAW: If you can answer it.

6 THE WITNESS: Could you repeat the
7 question.

8 (Record read.)

9 A. I don't have an understanding as
10 to whether they would be -- should be included
11 or not because it would have been dependent on
12 the terms of the bank loan.

13 **Q. Why would it have been dependent**
14 **on the terms of the bank loan, sir?**

15 A. Some agreements require a full
16 segregation of assets and some do not.

17 **Q. You see in your notes at 562-D,**
18 **page 1, the second paragraph under topic 32-B,**
19 **the methodology for compiling it. Do you see**
20 **that you write: After the closing those same**
21 **individuals and others attempted to verify**
22 **that the assets on the list had either been**
23 **transfers (on the 19th, 29th or 30th), or**
24 **showed on Lehman's stock record as available**
25 **to be transferred.**

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1 **Hraska**

2 A. Yes.

3 **Q. Who were the others that you were**
4 **referencing in that sentence?**

5 A. It would have been individuals who
6 worked for the people listed above. So -- and
7 not necessarily that there were folks who
8 worked for every single person listed above,
9 but there may have been individuals who worked
10 for particular people who were involved. For
11 example in clearance.

12 **Q. You go on to say in that same**
13 **paragraph: There was also an attempt to**
14 **identify any additional assets in Lehman's**
15 **clearance boxes that were not customer or**
16 **affiliate assets that had been fully paid for.**

17 A. Yes. Right.

18 **Q. Schedule B was a result of those**
19 **processes.**

20 **Do you see that?**

21 A. I do, yes.

22 **Q. Is that for those processes that**
23 **you described in that paragraph, did they take**
24 **place between the closing of the deal on**
25 **September 22nd and September 30, 2008?**

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Hraska

A. Yes.

Q. I think I have your prior testimony on this, but you as Barclays 30(b)(6) representative on Schedule B are not aware of any differences between the Schedule B that was available at the closing of the transaction and the Schedule B that was ultimately filed with the Bankruptcy Court; is that correct?

MR. SHAW: Objection to the form.

A. I don't know of any differences between the schedules. There is a possibility after I had submitted the work that we did on that weekend that it might have been an asset or two which was, or maybe more, which were added or deleted. But I was not -- I didn't do a comparison of those two to see if there were differentials.

Q. Again as Barclays 30(b)(6) representative on topic number 2 you don't have any information about any differences between the Schedule B version that was available at the closing on the 22nd and the version of Schedule B that was ultimately

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filed with the Bankruptcy Court; is that correct?

MR. SHAW: Objection to the form. Goes beyond the scope of his 30(b)(6) testimony. You can answer though.

A. That is correct.

Q. Turning to topic C, Barclays has analyzed Schedule B, you write: Barclays is not aware of any non-privileged analysis of schedule.

Do you see that?

A. Yes.

Q. When we were looking at Exhibit 561-D you testified about a column entitled Schedule B Quantities. Do you remember that testimony?

A. I do, yes.

Q. You testified about what you understood to be the analysis that underlay the data in that column?

A. Yes.

Q. Do you not consider that to be an analysis of Schedule B?

A. I took analysis to be more so

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Hraska

related to assets, asset types, you know, that kind of thing, sort of the nature of the assets, and not necessarily analysis of what was on one schedule versus another or delivered or not, and that kind of thing. It could possibly be just my interpretation.

MR. OXFORD: Off the record for a second.

(Luncheon recess: 12:32 p.m.)

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Hraska

AFTERNOON SESSION

(Time noted: 12:55 p.m.)

JIM HRASKA, resumed and

testified as follows:

EXAMINATION BY (Cont'd.)

MR. OXFORD:

Q. Mr. Hraska, could you have in front of you again your notes for the 30(b)(6) deposition, Exhibit 562-D, please?

A. Yes.

Q. I would like to turn now to topic 33 and your notes on that subject?

A. Yes.

Q. Topic 33 is Exhibits A and B to the Granfield letter, including A, who prepared each exhibit and the methodology used to prepare each exhibit?

A. Yes.

Q. You list individuals primarily involved in the creation of what you described as Lists A, B1, B2 and C, we will get into the detail of that momentarily, but if you could just generally describe for me what you understand to be meant by Lists A, B1, B2 and

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Hraska

C in turn?

A. In the aggregate or individually?

Q. Individually if you could just give me a top line understanding of List A and the other lists that you reference there, please?

A. List A would have been securities which were firm inventory only positions. So there would have been no other entries to the stock record other than firm inventory accounts and depot accounts for those particular securities.

List B1 was the subset of data where securities had positions on a stock record where -- I want to clarify this so it is not confusing.

List B1 were securities that we believed were firm securities, however they were securities on a stock record which included positions in a depot that had both firm inventory as well as non-firm inventory.

List C would have been securities where there were only customer securities on the stock record and the depot securities.

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Hraska

Q. Thank you.

A. Your welcome.

Q. You List A number of individuals primarily involved in the creation of those lists?

A. Yes.

Q. There are two names I don't believe you testified about before today. The first name that is new to me is John Vergel, V-E-R-G-E-L, de Dios?

A. Yes.

Q. Can you tell me what his involvement was in the creation of Lists A through C?

A. His involvement was he did some spreadsheet work along with Colin Telmer. So he worked in treasury for Robert Azerad, and both he and Colin did some spreadsheet work around the analysis of the results. John had primarily focussed on the spreadsheet work on the earlier -- sort of the earlier phases, and then I don't know if John left the firm or if he was no longer in treasury, but Colin took over the spreadsheet work for Robert at a

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later point in time.

Q. The next name new to me is Josie Ocreto?

A. Yes. She was a technologist from the TMS system.

Q. Below those names you explain that Exhibit A reports the results of List A?

A. Yes.

Q. And Exhibit B reports to results of List B, do you see that?

A. Yes.

MR. SHAW: List B1.

A. Yes.

Q. Are those Exhibit A and Exhibit B that you reference in that section of your notes the same Exhibits A and B to the Cleary Gottlieb letter from March of 2009 that I marked as Exhibit 156-B?

A. Yes.

Q. You go on to write: Exhibit C reports the results of a subset of Lists B2/C, sometimes referred to as B2 and C?

A. Yes.

Q. Exhibit C is an exhibit to what

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document if you know, sir?

A. I don't recall.

Q. When was Exhibit C created?

A. Exhibit C would have been created in late June of 2009. I believe late June. Well the data that went into -- I should clarify that the data that went into the Exhibit C as you see it was done in late June. I am not a hundred percent certain when C was created as you see it after that. I would assume very shortly thereafter.

Q. The underlying data analysis that is reflected in Exhibit C was performed in June of 2009?

A. Yes, that is correct.

Q. Do you have any information, sir, about when if at all Exhibit C has been provided to the SIPA trustee?

A. I believe it has, yes.

Q. Tell me what you know about that, please?

A. From a conversation I had with -- MR. SHAW: I don't want you to get into any privileged conversations.

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1 Hraska
2 THE WITNESS: So then somebody who
3 is Barclays legal is considered a
4 privileged conversation?

5 MR. SHAW: That is right.
6 In-house lawyers are lawyers too.

7 If you can't answer the question
8 on the basis of non-privileged
9 information just say so. Let me step
10 outside for a moment. Off the record.

11 (Recess taken.)

12 A. I have no non-privileged
13 information on the topic.

14 Q. It appears at the bottom of page 2
15 and on through page 3 Mr. Hraska your notes
16 describe the process by which in the first
17 instance List A was compiled; is that correct?

18 A. That is correct.

19 Q. Can you tell me if in the process
20 of compiling List A Barclays provided for any
21 exceptions in the depot ranges?

22 MR. SHAW: Objection to the form.

23 Vague.

24 A. No. There was no exception in the
25 depot ranges.

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1 Hraska
2 necessarily reflected what was on September
3 22nd.

4 Q. Do you have any basis to believe
5 that any of the CUSIP's on Exhibits A and B
6 were added to Lehman's clearance boxes after
7 the closing of the transaction on September
8 22, 2008?

9 A. Could you repeat the question.

10 (Record read.)

11 A. Well all I can say is that we took
12 the position off of the stock record which was
13 the in-house books and records. So as it
14 appeared to the books and records, whatever
15 was there as of that date would have been what
16 we reported on.

17 As to whether physically anything
18 was moved in or out of the clearance box in
19 that time period, I wouldn't have any
20 knowledge of that.

21 Q. You said you took the position off
22 of the stock record as of which date, November
23 17th or September 22nd?

24 A. November 17th.

25 Q. Did Barclays in conducting its

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2 Q. Can you tell me why that was,
3 please?

4 A. I cannot, no.

5 Q. Did Barclays perform any testing
6 of the results that were generated in the
7 process described on page 2 and page 3 of your
8 notes in generating List A?

9 MR. SHAW: Objection to the form.

10 Vague.

11 A. I am not aware of any testing that
12 was done, or that any would have been
13 possible. The data that we had was the stock
14 record and we applied these selection criteria
15 to it.

16 Q. On the basis of these, the
17 application of these selection criteria is
18 Barclays confident that every CUSIP listed on
19 Exhibits A and B actually existed in Lehman's
20 clearance boxes as at the closing of the
21 transaction on September 22nd?

22 MR. SHAW: Objection to the form.

23 A. These criteria were applied from a
24 data set that was taken as of November 17th,
25 not September 22nd. So that it would not have

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1 Hraska
2 analysis assume that all securities that were
3 in the stock record on November 17, 2008 were
4 also in the stock record as of September 22,
5 2008?

6 A. The period of September 22nd or
7 the time around September 22nd the stock
8 record had a lot of what we would define as
9 breaks which were inconsistencies due to what
10 was going on in the market at that time. You
11 know, data providers not sending in data,
12 things along that nature. It took some time
13 to work through some of these discrepancies to
14 create accurate records, and it was not until
15 November that we felt that these breaks and
16 differences had been reconciled through to the
17 point that we felt confident with the stock
18 record data. So that is why we took the data
19 in November.

20 Q. And did the data that you worked
21 from in November after the reconciliation
22 process you just testified to that you used to
23 create Exhibits A and B, did that reflect the
24 securities that were in Lehman's clearance
25 boxes at the time of closing on September

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22nd, or securities that were in Lehman's clearance boxes at some later date such as November 2008?

A. It would have been what was on the stock record as a reflection of what was in the clearance box, not necessarily what was in the actual clearance box being held either at the custodian or DTC. We only have the stock record information available to us to analyze. And because of the breaks that needed to be resolved as well as there should not have been any other new activity other than break resolution going on, we felt confident that the positions once reconciled through in November should have reflected reasonably what would have been expected to have been there on the 22nd as well.

Q. If I understand your testimony correctly, Mr. Hraska, you used in November 2008 in compiling the data that came in Exhibits A and B, two sources of data. Firstly Lehman's stock record, and secondarily information from the custodians including DTC; is that correct?

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MR. SHAW: Objection.
Mischaracterizes the testimony.

A. No. We used the data from the stock record and we did not use specific data for that analysis from the custodian's directly.

Q. What was the date of the data -- withdrawn.

The data from the stock record that you used in November of 2008 to compile what became Exhibits A and B reflected the position in Lehman's clearing boxes as of which date, sir?

A. As reflected on the stock record it would have been the positions that were there on the 17th of November.

Q. Turning to your notes at the bottom of page 3?

A. Yes.

Q. On topic B1, do you see those notes?

A. Yes.

Q. I think I understand it, but I wanted to ask you a question by way of a

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hypothetical example so I can put some numbers in this and make sure that I am not missing something.

If for example the stock record showed that there were 300 CUSIP's, 200 of which belonged to the customer, and there were only 90 remaining at the depot, did the rules result in only 90 CUSIP's being added to B1?

A. I think you might have -- or maybe I didn't describe it clear enough.

These rules were not to the number of CUSIP's, but rather for each CUSIP how the quantity was determined. So to use an example, if there were -- if there was one CUSIP that had a hundred shares in the depository or in the depot account, and there was a customer position of 50, we would have subtracted out the customer position to reserve those shares of -- those 50 shares for the customer, and we would have reflected the remaining 50 shares on B1.

We would have done that for every CUSIP, which is why the lists yielded what they did. Some securities only had customer

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positions and some only had firm, and some had a mixture of both, which is why we had to split B into B1 and B2.

Q. Sir in your example if the stock record showed that there were 110 shares of that CUSIP in the depot and the customer position of 50, but there were only a hundred shares in the depot record, how many shares would be added to B1?

A. I am not sure that your question makes sense. Could you repeat it -- based on the terms you used.

Q. Can you read it back. (Record read.)

A. We only had a view of the depot record. So in that case we would have only seen that there was a hundred in the depot.

Q. So there was no analysis of the stock record in your steps to compile B1?

A. I think it is too broad of a question. There was an analysis, the analysis was based off of these criteria. We did that analysis based off of the depot positions as reflected on the stock record at a point in

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2 time where the depots on the stock record
3 should have been reasonably reconciled to the
4 actual custodians where they would resolve
5 numerous breaks up to that point. So at that
6 point we felt confident to purely use the
7 stock record.

8 **Q. You see in the list of report**
9 **rules, you see item 3, it says: From the**
10 **remaining depot balances after customer**
11 **positions have been taken away, take the**
12 **lesser of the summary of the inventory**
13 **positions (931 range) for remaining depot**
14 **balance.**

15 **That is what prompted my**
16 **questions?**

17 A. So the reason that rule was put
18 into place was that if there were still breaks
19 which had not fully been resolved, as I
20 testified there was a large number had been
21 resolved, but to the extent there were not
22 stock records have to be balanced. Long being
23 the asset side, short being depository.

24 So in the example of if there was
25 a hundred shares in the stock record as being

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2 in the depot, 50 of it belonging to a
3 customer, perhaps 40 of it belonging to an
4 inventory trader, and 10 sitting in a break
5 account because it was unresolved, we would
6 have taken the lesser of the quantity and not
7 taken the full depot position at that point in
8 time.

9 **Q. I understand. That explanation**
10 **was helpful, thank you.**

11 **If you can turn the page to number**
12 **4, page 4, topic, customer only list, List C?**

13 A. Yes.

14 **Q. Can you tell me when this, the**
15 **effort behind the List C was begun; is that**
16 **the same process that was begun in June of**
17 **2009 that you testified about earlier?**

18 A. Yes. For List C that is correct.

19 **Q. And from whom did you --**
20 **withdrawn.**

21 **Who asked you to get involved in**
22 **the process that generated List C?**

23 A. List C, not Exhibit C, List C as
24 listed on this page 4; right?

25 **Q. Yes.**

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2 A. List C would have been ultimately
3 still at the direction of treasury along with
4 Lists A, B1 and B2. That exercise was all
5 done at the same time, and the reason we
6 separated it was to understand the nature of
7 the ownership of those securities. So it was
8 one data set that was broken out to subsets
9 according to ownership.

10 **Q. Who asked you personally to get**
11 **involved in the data analysis that resulted in**
12 **List C?**

13 A. Robert Azerad.

14 **Q. When did he first ask you to get**
15 **involved in the List C creation process?**

16 MR. SHAW: When you say the List C
17 creation process, you mean A, B1, B2 and
18 C process?

19 **Q. No, the List C creation process?**

20 A. As previously testified they are
21 one in the same. So that would have been --
22 that specific process would have -- the
23 discussions to do the analysis would have been
24 in early November, and then subsequently we
25 pulled the data in mid November, I believe

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1 **Hraska**

2 November 17th, and worked on it from there.

3 **Q. So it is your testimony that from**
4 **November 17th forward Barclays was working on**
5 **the analysis of the data that is contained in**
6 **List C?**

7 A. Yes.

8 **Q. That is November 17, 2008?**

9 A. 2008, yes, correct.

10 **Q. Again focusing on List C, can you**
11 **tell me with as much specificity as you can**
12 **the direction that Mr. Azerad gave you in**
13 **connection with your role in analyzing the**
14 **List C data?**

15 MR. SHAW: Objection.

16 Mischaracterizes prior testimony.

17 Assumes facts not in evidence.

18 A. Mr. Azerad had directed us to make
19 sure that we could separate securities off of
20 the analysis that we did, which were purely
21 customer where there was no inventory or any
22 other positions on the stock record not
23 related to customers. We had told him as part
24 of the analysis we did which created A, B1 and
25 B2, that C was the portion of that list --

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2 that C was the result of the securities which
3 were purely belonging to customers. Again
4 List C as specified on page 4.
5 **Q. What is the distinction between**
6 **List C and Exhibit C; is it that Exhibit C**
7 **includes data from List B2 and C?**
8 A. There are a few distinctions.
9 One, Exhibit C does in fact include data from
10 List B2. Another is that Exhibit C is the
11 result of analyzing customer debit balances
12 versus the present marked value of securities
13 in the system, and then creating an
14 entitlement amount which would have equated to
15 up to a hundred percent of the debit balance
16 in the customer's account.
17 One more distinction is that the
18 customers that were in question on Exhibit C
19 were the 732 range customers, which is a range
20 defined for prime broker customers.
21 **Q. I see that you have explained in**
22 **your notes the court rules on definition of**
23 **criteria used in the creation of List C?**
24 A. Again this is back to page 4,
25 middle of the page.

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2 including the sentence customer based firm
3 entitlements. So List C goes from the point
4 you said up to, but not including that
5 sentence.
6 **Q. The report rules that you included**
7 **in your note appear in item 2, select only PB**
8 **range; is that accurate?**
9 MR. SHAW: Where?
10 **Q. Page 4, about two thirds of the**
11 **way down, report rules, point 2?**
12 A. Yes.
13 **Q. Are those rules that apply to the**
14 **creation of List C, sir?**
15 A. Yes.
16 **Q. So we should add them into your**
17 **earlier answer?**
18 MR. SHAW: Well, no, because your
19 earlier question was about selection
20 criteria, not report rules.
21 **Q. Then can you give me a**
22 **hypothetical example that will help me**
23 **understand in addition to the selection**
24 **criteria also the report rules that you used**
25 **in connection with List C?**

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2 **Q. Yes, over on to 5?**
3 A. Okay.
4 **Q. Can you give me a hypothetical**
5 **example that would help me understand the**
6 **application of those rules?**
7 A. Well for List C it would have been
8 securities where the only positions in the
9 stock record would have been a position which
10 was on one side of the stock record belonging
11 to a customer. On the location side of the
12 stock record, the other side of the stock
13 record being in a depot.
14 So to the extent that there were a
15 hundred shares in the depot, that hundred
16 shares would have been owned by one or more
17 customers only and not by any other entity or
18 inventory trader or anything like that.
19 **Q. Anything else for List C?**
20 A. For List C, no.
21 **Q. Are those the selection criteria**
22 **that appear in the immediately below customer**
23 **lists -- sorry, customer only (List C)?**
24 A. The selection criteria goes
25 through the end of page 4 up to but not

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2 A. Hypothetical example meaning, so
3 if we had to the extent that we used an
4 example before, that hundred shares that was
5 in the depot was in a 732 range, we would have
6 put it on lists C from the selection criteria
7 above for this particular section. If it was
8 not included we would not have included it.
9 **Q. Can you explain what is meant by**
10 **your notes under that, what appears to be the**
11 **heading customer based firm entitlements, List**
12 **B2 and C in parens?**
13 A. Yes. So we had segregated out
14 from the previous exercises what securities
15 belonged to PB customers, the two exercises
16 that denoted customer securities were in List
17 B2 and as we just talked about in C. But that
18 was just the position itself that was on the
19 stock record as a position which would have
20 been sitting in a PB defined account.
21 **Q. PB just so we have a clear record**
22 **stands for prime broker?**
23 A. Yes. However to determine the
24 entitlements we needed to understand whether
25 or not the customer maintained a debit balance

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2 in the account. So we got the debit balances
3 from the stock record as well in each of the
4 customer accounts in those two lists. And
5 then we filtered out and looked at only
6 customers that had debit balances.

7 And then we compared the marked
8 value of the securities to the debit balance.
9 And then we claimed entitlement to all of the
10 securities that -- all of the securities that
11 had a marked value of up to the value of the
12 debit balance.

13 So to clarify that, we would have
14 not -- we would have not claimed entitlement
15 to any more securities that in sum would have
16 equalled any more than the debit balance.

17 **Q. I understand, that is a very**
18 **helpful explanation, I appreciate that.**

19 A. Okay.

20 **Q. You mentioned in that answer that**
21 **the steps that you just described were to**
22 **determine entitlement. What did you mean by**
23 **the term entitlement; whose entitlement?**

24 A. Well entitlement from the sense of
25 whether the customer still had entitlement, or

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2 whether the firm would have had entitlement
3 based off of the rehypothecation rights which
4 would have been afforded based on the debit
5 balance.

6 **Q. Did you consider in your analysis,**
7 **sir, whether the securities in these prime**
8 **broker customer accounts had in fact been**
9 **rehypothecated by Lehman?**

10 A. If there were -- if there were
11 debit balances in the account they were
12 rehypothecated.

13 **Q. If I understand your answer, you**
14 **are trying to tell me that all securities that**
15 **are in this analysis you just testified to**
16 **would automatically have been rehypothecated;**
17 **is that correct?**

18 A. Yes, that is correct.

19 **Q. Just so we can bring this down to**
20 **a level that a layman such as me can**
21 **understand. The rehypothecation would involve**
22 **a transaction such as Lehman pledging that**
23 **security to a bank for a bank loan, correct;**
24 **would that be an example of such a**
25 **rehypothecation that Lehman would have done in**

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2 **the circumstances that you just described?**

3 A. As just described the
4 rehypothecation process would have been the
5 rights of Lehman to have had access to that
6 security because it was providing financing to
7 the customer. It would have been a separate
8 transaction where Lehman might have used those
9 securities to raise financing to replenish the
10 financing that it had given to the customer,
11 but that would have been a separate
12 transaction.

13 **Q. Did Barclays in creating List C**
14 **include in that analysis any data relating to**
15 **whether or not Lehman had in fact**
16 **rehypothecated the securities in question?**

17 MR. SHAW: Objection to the form.

18 A. Can you define what you are
19 defining as rehypothecated, because to me it
20 means if Lehman has access to the security it
21 has been rehypothecated. Are you asking me
22 whether we did any analysis as to whether
23 those same securities were used as part of a
24 financing transaction?

25 **Q. Yes.**

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2 A. It would have been those
3 securities then in that particular case we
4 would have deemed that, that once the first
5 leg of the rehypothecation was done, which
6 means that we took entitlement from the
7 customer, that those securities at that point
8 were -- would have been Lehman's to do what
9 they had chose to do with them regarding
10 financing.

11 So at that point if they were in
12 another financing transaction, whoever was on
13 the other side of that financing transaction
14 would have been on the stock record as well.
15 So in that case those wouldn't have been in a
16 depot, but rather as an obligation to another
17 financing counterparty.

18 So in that case we would have --
19 we would have had a long customer versus a
20 loan of those securities to another financing
21 counterparty. Those would have not come up on
22 our search because that other side of that
23 equation would not have shown up as a depot
24 where the securities were available.

25 **Q. So if Lehman did once the**

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2 securities that were in the prime broker
3 accounts and had been rehypothecated to Lehman
4 then pledged them as part of a bank loan to
5 replenish the finance that it used to purchase
6 the securities in the first place. Securities
7 that were the subject of such refinancing by
8 Lehman would be excluded from your analysis in
9 List C; is that your testimony?

10 A. I am trying to think from a stock
11 record perspective. From a stock record
12 perspective it all depends on the nature of
13 the bank loan. You would have to be very
14 specific about bank loan for me to answer
15 that. I am sorry, I am not trying to be
16 difficult.

17 Q. I understand, I think you are
18 trying to be very helpful.

19 Why would it depend on the nature
20 of the bank loan, sir?

21 A. If it was a bank loan type
22 transaction, if you are referring to a
23 tri-party transaction, then in that case the
24 securities would have been in an account where
25 that would have been in a clearance account

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2 where it would have fallen in the range of a
3 depot where we would have said even though we
4 are arranging financing, the positions were
5 still sitting in a clearance box that would
6 have belonged to Lehman and we would have made
7 a claim against them.

8 Whether or not we would have
9 gotten them as a result of anything, as a
10 result of the bank loan might have been a
11 different story. But they would have been in
12 an account which would have been defined as
13 one that we would lay claim to. If they were
14 done on a non-tri-party or a deliverable type
15 bank loan transaction where the securities
16 would have been delivered out of our clearance
17 box to a recipient's clearance box, in that
18 case we wouldn't have showed them on the stock
19 record in a location that was defined as a
20 depot, so we wouldn't have been on the List C
21 in that case.

22 Q. In the first example, the
23 tri-party example that you just gave me you
24 mentioned that Barclays would lay claim to a
25 security even though it may not be available.

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2 Can you explain that a little further?

3 A. It would have been available in
4 the normal course because it would have been
5 in our clearance box. But had we pledged it
6 to the financing counterparty who would have
7 as a result of the events that took place
8 seized the asset, it wouldn't have been
9 available as I described.

10 From a stock record position
11 perspective it would have appeared as though
12 we had entitlement, but physically we might
13 not have been able to take possession of the
14 asset.

15 Q. Because in a bankruptcy situation
16 the counterparty would have seized the
17 securities that had been pledged as a result
18 for that?

19 A. Yes.

20 Q. Correct?

21 A. Yes.

22 Q. In the analysis that results in I
23 believe Exhibit C and in the processes that
24 are described on pages 4 and 5 of your notes
25 to create Exhibit C, was there any account

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2 taken of the obligation on the part of Lehman
3 under the financing transaction when Lehman
4 rehypothecated the security to a party such as
5 a bank to provide additional finance?

6 MR. SHAW: Objection to the form.

7 A. There was an analysis that was --
8 are you asking me if there was an analysis
9 done by Lehman or Barclays?

10 Q. Barclays?

11 A. Barclays, no.

12 Q. Was there an analysis done by
13 Lehman?

14 MR. SHAW: Objection. Foundation.

15 A. There were conversations that I
16 was asked to be a part of which very early
17 stages people were asking questions about the
18 scenario that we just described from the
19 trustee's perspective. And so from that I
20 assume there was a Lehman analysis done, but I
21 was not part of it.

22 Q. With whom did you have this early
23 conversation?

24 A. From the Lehman side it would have
25 been David Aronow at the time, he was

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<p>1 Hraska</p> <p>2 primarily running the point on that with the</p> <p>3 trustee.</p> <p>4 Q. Who is David Aronow?</p> <p>5 A. David Aronow used to work in the</p> <p>6 prime brokerage front office, but he had done</p> <p>7 previous jobs at Lehman such as running</p> <p>8 clearance and a few other things. So he was</p> <p>9 asked to be a point person on that particular</p> <p>10 topic.</p> <p>11 Q. If I understand your testimony</p> <p>12 correctly, he was an employee of the trustee's</p> <p>13 office?</p> <p>14 A. No, he was an employee of Lehman</p> <p>15 Brothers and he was liaising with somebody</p> <p>16 from the trustee's office, but I don't</p> <p>17 remember who.</p> <p>18 Q. Can you give me an estimation as</p> <p>19 to the date of this conversation; was it pre</p> <p>20 or post closing?</p> <p>21 A. Honestly I don't know. There was</p> <p>22 a lot of things going on during that time</p> <p>23 period.</p> <p>24 Q. Maybe I can approach it this way.</p> <p>25 If I can represent to you for the purposes of</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 Hraska</p> <p>2 the rest of this examination that the SIPA</p> <p>3 trustee was not appointed until the afternoon</p> <p>4 of Friday the 19th of September, which was a</p> <p>5 couple of days before the closing on the 22nd,</p> <p>6 did that help you answer my question when did</p> <p>7 this early conversation about the trustee's</p> <p>8 perspective on --</p> <p>9 A. The closing being defined as the</p> <p>10 22nd, right?</p> <p>11 Q. Yes. Does it help you answer my</p> <p>12 question and give me a more specific timeframe</p> <p>13 about this conversation that involved David</p> <p>14 Aronow and prime brokers?</p> <p>15 A. That would have taken place I</p> <p>16 believe the week of the 22nd.</p> <p>17 Q. Were you involved in this</p> <p>18 conversation?</p> <p>19 A. I was involved in an initial</p> <p>20 conversation to understand how rehypothecation</p> <p>21 works with respect to our stock record.</p> <p>22 Q. In this conversation it was you,</p> <p>23 David Aronow, and who else?</p> <p>24 A. I don't recall who it was from the</p> <p>25 trustee who was involved in that conversation.</p> <p>TSG Reporting - Worldwide 877-702-9580</p>
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<p>1 Hraska</p> <p>2 There may have been somebody from clearance,</p> <p>3 but I don't recall.</p> <p>4 Q. Can you tell me everything that</p> <p>5 you remember about that conversation?</p> <p>6 A. The initial conversation was</p> <p>7 purely to understand what mechanics there were</p> <p>8 around rehypothecation, how the systems</p> <p>9 worked, that kind of thing.</p> <p>10 Q. Was the predicate for the</p> <p>11 conversation that someone from the trustee's</p> <p>12 office was trying to understand</p> <p>13 rehypothecation, is that what you are saying?</p> <p>14 A. Was trying to understand</p> <p>15 rehypothecation with respect to how did it</p> <p>16 function internally within our internal</p> <p>17 mechanisms.</p> <p>18 Q. The week of the 22nd, sir, 22nd of</p> <p>19 September 2008 you were employed by Barclays</p> <p>20 at this time?</p> <p>21 A. As of September 22nd I was</p> <p>22 employed by Barclays.</p> <p>23 Q. Does the same apply to Mr. Aronow?</p> <p>24 A. Yes.</p> <p>25 Q. Do you remember any other</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 Hraska</p> <p>2 conversations with anyone from the trustee's</p> <p>3 office on this same topic, rehypothecation and</p> <p>4 prime broker accounts?</p> <p>5 A. No.</p> <p>6 Q. The data set that is used in the</p> <p>7 analysis that underlies Exhibit C, sir, is</p> <p>8 that the same November 17, 2008 data set?</p> <p>9 A. Yes.</p> <p>10 Q. It is correct to say that Barclays</p> <p>11 did not assume responsibility for Lehman's</p> <p>12 prime broker accounts after the closing?</p> <p>13 MR. SHAW: Objection. Foundation.</p> <p>14 Beyond the scope of the 30(b)(6). If you</p> <p>15 know you can answer. Calls for a legal</p> <p>16 conclusion as well.</p> <p>17 A. Barclays did not assume</p> <p>18 responsibilities to the best of my knowledge</p> <p>19 of the Lehman prime broker accounts.</p> <p>20 Q. At what date did Barclays --</p> <p>21 withdrawn.</p> <p>22 What date did Barclays use to</p> <p>23 value the CUSIP's on Exhibit C in calculating</p> <p>24 what they say is their entitlement?</p> <p>25 MR. SHAW: Objection to the form,</p> <p>TSG Reporting - Worldwide 877-702-9580</p>

Hraska
foundation, including beyond the scope of
the 30(b)(6). If you know you can try to
answer it.

A. The analysis that we performed was
based off of November 17th debit balances as
well as November 17th prices which would have
been in the TMS stock record.

MR. OXFORD: Off the record for a
second.

(Recess taken.)

MR. OXFORD: Would you mark
Exhibit 563-D, one-page document headed
Exhibit C-Additional Clearance Box
Securities.

(Exhibit 563-D, one-page document
headed Exhibit C-Additional Clearance
Box Securities, marked for
identification, as of this date.)

MR. OXFORD: Would you mark as
Exhibit 564-D, document headed 732
Accounts With Securities That May Be
Potential Firm Claims If Firm Financed.

(Exhibit 564-D, document headed
732 Accounts With Securities That May Be
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Hraska
Potential Firm Claims If Firm Financed,
marked for identification, as of this
date.)

Q. Mr. Hraska, I have placed in front
of you two additional exhibits marked 563-D
and 564-D. Looking at 563-D first, can you
tell me if you know what that document is?

A. I don't know.

Q. It bears a legend, Exhibit C
additional clearance box securities. Do you
see that?

A. Yes, I do. Nothing that I have
been involved with the creation of.

Q. If I can direct your attention
back to 562-D, which are your notes?

A. Yes.

Q. Your deposition notes on page 2?

A. Yes.

Q. Topic 33?

A. Yes.

Q. Just below the list of names,
second sentence reads: Exhibit C reports the
results of a subset of Lists B2/C, sometimes
referred to as the List B2 and C?

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Hraska

A. Right.

Q. Are those your notes, sir?

A. They are my notes, yes.

Q. Do those notes help you answer my
question what is Exhibit 563-D?

A. No, because Exhibit C is as it was
previously marked and shown, and that Exhibit
C is a subset of B2 and C. But this is
neither of those.

Q. When you say it was previously --
Exhibit C was previously marked and shown,
where and shown to who?

MR. SHAW: I think he is confused.

MR. OXFORD: Off the record for a
second.

(Recess taken.)

MR. OXFORD: While we were off the
record we sorted out the confusion. I
marked a different document as 563-D.

Q. Do you see the newly marked 563-D
in front of you?

A. Yes.

Q. Do you recognize that document?

A. Yes.

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Hraska

Q. What is it, please?

A. Exhibit C.

Q. That is the Exhibit C that you
referenced in your testimony prior today?

A. Yes.

Q. That is the Exhibit C that you
have referenced in your deposition notes
marked as 562-D?

A. Yes.

MR. SHAW: He has one point to
make about something on Exhibit C, a
clarification about something.

MR. OXFORD: Okay.

Q. Okay.

A. So in preparing for the deposition
I looked at Exhibit C versus -- which came
from a spreadsheet that I had prepared which
was the B2/C list, and I noticed that the last
two quantities on Exhibit C are incorrect.

On the work that we had done where
we had described B2/C in comparing the debit
balances, in every security except the last
two the marked value of the securities in
their entirety were less than the debit

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2 balance, therefore we claimed a hundred
3 percent of the quantity as an entitlement.

4 For the last two securities we
5 were only able to claim a pro rata portion of
6 these quantities, and the pro rata portion
7 that we would claim is not listed here. So it
8 is a lesser quantity obviously being pro rata.

9 **Q. If I understand your testimony**
10 **correctly what you are saying is for the last**
11 **two entries in Exhibit C that we marked as**
12 **Exhibit 563-D, Met Life Inc. and Net Gear**
13 **Inc., what is stated in the quantity column is**
14 **100 percent of the value of the CUSIP's, and**
15 **Barclays claim in fact is to less than 100**
16 **percent of the value of the CUSIP's?**

17 A. Yes. For the last two Barclays
18 would not claim a hundred percent value.

19 **Q. Do you know off the top of your**
20 **head what percentage Barclays is claiming?**

21 A. The quantity?

22 **Q. Yes.**

23 A. Off the top of my head no, but the
24 electronic form of this --

25 MR. SHAW: Leave a gap in the

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1 Hraska
2 record, we can fill that in.
3 MR. OXFORD: Yes, that is a good
4 idea.

5 TO BE FURNISHED: _____

6
7 **Q. Do I understand correctly,**
8 **Mr. Hraska, that Barclays claim is not for**
9 **these securities that are listed on Exhibit C,**
10 **but for the value of those securities?**

11 A. No. It would be for these
12 specific securities.

13 **Q. Is it your testimony, sir, that**
14 **all of these securities were held in the**
15 **accounts of prime brokers?**

16 A. Yes.

17 **Q. Do you know what the prefix 931**
18 **means in connection with Lehman securities**
19 **accounts?**

20 A. Yes, they are firm inventory
21 accounts.

22 Can I just back up to your
23 question prior to that question?

24 **Q. Sure.**

25 A. If you wouldn't mind please read

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1 Hraska
2 that back.

3 (Record read.)

4 A. Could I make a clarification to
5 that?

6 **Q. Please do.**

7 A. Exhibit C as stated here is a
8 subset of B2 and C. In B2 was a list where
9 there were securities on the stock record that
10 could have been both the prime broker
11 accounts -- wait a minute, I'm sorry. I am
12 sorry, never mind, my answer is still yes. I
13 am confused.

14 MR. SHAW: That is okay. No
15 problem.

16 **Q. Do you have an understanding, sir,**
17 **of what the prefix 950 means in connection**
18 **with Lehman securities accounts?**

19 A. They would have been an affiliate
20 type range, 950.

21 **Q. In the processes that resulted in**
22 **the creation of Exhibit C, sir, did Barclays**
23 **do any checking or due diligence to determine**
24 **whether or not the securities listed on**
25 **Exhibit C were also contained in firm**

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2 inventory accounts rather than prime broker
3 accounts or affiliate accounts -- withdrawn.

4 **In the processes to create Exhibit**
5 **C, sir, were any accounts other than prime**
6 **brokerage accounts taken into consideration?**

7 A. For Exhibit C; no, there should
8 not have been any other accounts that were
9 prime broker -- other than prime brokerage
10 accounts.

11 **Q. So you wouldn't expect there to be**
12 **on Exhibit C securities that are also**
13 **contained in Lehman affiliated accounts; is**
14 **that correct?**

15 A. I just need a minute, I apologize,
16 because something is bottoming me that I
17 hesitated before on. So can I just take a
18 minute to think through.

19 **Q. Sure. Go off the record for a**
20 **second.**

21 (Recess taken.)

22 A. Back on the record.

23 So I can answer this question and
24 then -- so to answer this question, it is
25 possible that CUSIP's or security numbers that

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2 end up on Exhibit C would have been in firm or
3 affiliated accounts as well. I can explain
4 why based on a clarification on that earlier
5 testimony that I had sort of referred back to.

6 **Q. Okay, please explain?**

7 A. List B1 and B2 were basically
8 broken out for securities where there were
9 positions in that CUSIP which were a mix of
10 firm inventory as well as customer. In order
11 to separate out the lists as to what were
12 considered for customer purposes and what were
13 considered for firm purposes we went through
14 that process where we -- where I testified
15 earlier where we took the customer portion, we
16 reserved that portion of the depot, and then
17 the other portion based on the lesser quantity
18 was the firm's security which became List B1.

19 So Exhibit C is a combination of
20 List B2 which was from that pool of securities
21 that may have been in both places. So as a
22 result of it -- if there was a security number
23 that came from the derivation List B2, there
24 is a possibility that that security has a
25 quantity that is partially for the benefit of

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2 customer, which is why it would be on this
3 list.

4 And there would be partially --
5 there could be an instance where there was a
6 quantity which would have been for the firm
7 which would have been on the B1 list.

8 **Q. Does that answer explain why --**

9 A. That answer explains your last
10 question to me and why.

11 **Q. My question was not just related
12 to firm inventory accounts, my question
13 related to affiliate inventory accounts as
14 well. Does the answer that you just put on
15 the record after the break explain why there
16 would be on Exhibit C CUSIP's that also appear
17 in Lehman's affiliate inventory accounts?**

18 A. I don't believe you should find
19 affiliate securities on the list.

20 **Q. Could you take a look, sir, at
21 Exhibit 564-D, please?**

22 A. Yes.

23 **Q. Just take a minute to flip through
24 that and tell me if you have seen it before?**

25 A. Yes.

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2 **Q. Tell me what it is, please?**

3 A. It is the B2/C list.

4 **Q. That is the B2/C list that you
5 referred to in your deposition notes, Exhibit
6 562-D, and in your testimony here today?**

7 A. Yes.

8 **Q. Did you create this list, sir?**

9 A. I created it, yes. I created
10 this.

11 **Q. There are a number of tabs to this
12 spreadsheet that are separated by blue pieces
13 of paper. Did you create every single one of
14 the tabs?**

15 A. No.

16 **Q. Can you identify for me please
17 which ones you did create?**

18 A. I created the first page -- the
19 first tab -- the blues I assume delineate the
20 tabs in the spreadsheet?

21 **Q. That is my understanding, yes.**

22 A. I created the second tab. The
23 third tab, fourth tab, and the fifth tab I
24 don't recall -- this is raw data that we used,
25 I don't recall if we created this tab the way

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2 you see it, or whether it was provided to us
3 in the format that you see it. But some of
4 the raw data.

5 **Q. Thank you Mr. Hraska.**

6 **Do you see at the top left-hand
7 side of page 1 of Exhibit 564-D?**

8 A. Yes.

9 **Q. The first spreadsheet?**

10 A. Yes.

11 **Q. That you created it. It says 732
12 accounts with securities that may be potential
13 claims if firm financed.**

14 A. Yes.

15 **Q. Do you see that?**

16 A. Yes.

17 **Q. When you created the spreadsheet
18 what did you mean by that sentence that I just
19 read?**

20 A. Meaning if there was a debit
21 balance against these firm accounts we would
22 have financed -- had been considering to have
23 lend the customers in essence cash for the
24 purchase of these. So those would have been
25 firm financed.

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2 **Q. You used the words may be**
3 **potential firm claims, do you see that?**

4 A. Because in the initial analysis we
5 didn't -- not all accounts had debit balances.
6 So I think this tab at one point was initially
7 larger until we got to the point of filtering
8 out the ones that had debit balances versus
9 the ones that didn't.

10 **Q. So by filtering out the accounts**
11 **that had debit balances you go from an earlier**
12 **version of 564-D, page 1, to Exhibit C,**
13 **Exhibit 563-D to the deposition; is that**
14 **right?**

15 A. No. The number on the first tab
16 here of securities should be the same as what
17 is on Exhibit C. I think when we first got
18 the lists of B2 and C, which included more
19 accounts than you see here on the summary tab,
20 all those accounts were initially included,
21 but then once we applied the rules then it got
22 down to this number of accounts and
23 securities.

24 I think -- not I think, you look
25 at the CUSIP list here versus the CUSIP list

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2 on the summary, it is one in the same. It is
3 just that this list doesn't include
4 information around the market values and a few
5 other columns that you see on the spreadsheet.

6 **Q. There is a column as you averted**
7 **to a second ago in the summary spreadsheet**
8 **that is page 1 of 564-D?**

9 A. Yes.

10 **Q. That is market value?**

11 A. Yes.

12 **Q. Do you see that it is the fifth**
13 **column from the right?**

14 A. Yes.

15 **Q. What is the data source for the**
16 **numbers that appear below market value?**

17 A. The TMS stock record.

18 **Q. With --**

19 A. With, sorry?

20 **Q. With which date?**

21 A. It would have been November 17th
22 date.

23 **Q. November 17, 2008?**

24 A. Yes. We requested that it come
25 with the same data set from technology that
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2 the original data pull was from.

3 **Q. Does that same data set carry over**
4 **into the last column that is headed**
5 **entitlement market value?**

6 A. Yes. By virtue of formula this
7 market value was directly from TMS. The
8 market price in order for us to figure out the
9 entitlement market value we just applied a
10 formula to the number of shares and market
11 value.

12 **Q. Exhibit C you testified contains**
13 **only the securities that were held in the**
14 **accounts or shown in the stock record as being**
15 **the accounts of prime brokers at Lehman as of**
16 **closing; correct?**

17 A. As of November 17th.

18 **Q. Did Barclays perform any analysis**
19 **to determine whether these same CUSIP's were**
20 **in the prime broker accounts as of the close?**

21 A. There was no further analysis, but
22 we were confident that the securities were
23 there as a result of the stock record as well
24 as the resolution of the breaks and
25 discrepancies that we had talked about in the

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2 **previous round of testimony.**

3 **Q. How is it that the resolution of**
4 **the breaks gave Barclays confidence that the**
5 **securities listed here using the November 17th**
6 **date were in the prime broker accounts at**
7 **Lehman as of close?**

8 A. There should not have been any
9 other activity to the stock record other than
10 resolution of breaks. There should not have
11 been any unauthorized transfers, movements,
12 anything like that. So we were going under
13 the assumption that the stock record was
14 accurate, and once the breaks were resolved it
15 gave us a much better picture as to what would
16 have been in those, I will call it the stock
17 record and the clearance box as of the 22nd.

18 **Q. You say what would have been, I**
19 **will call it the stock record and clearance**
20 **box as of the 22nd?**

21 A. So what would have been the
22 reflective stock record on the 22nd.

23 **Q. Had those records --**

24 A. Had those records been done
25 properly under the normal course of business

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2 on that date.

3 **Q. But you are unable to testify as**
4 **to whether or not those records -- withdrawn.**

5 **You are unable to testify as to**
6 **whether or not as a matter of fact the records**
7 **that you used that had the November 17, 2008**
8 **data accurately reflect the actual status of**
9 **Lehman's books and records including its**
10 **clearance box accounts as of the close; is**
11 **that correct?**

12 MR. SHAW: Objection,
13 mischaracterizes prior testimony and
14 vague. You can answer if you can.

15 A. Could you read it back one more
16 time.

17 (Record read.)

18 A. As a matter of fact it represents
19 the best availability of data that Lehman has
20 as to its position at the time of the close.
21 But there is no other record as to that time
22 with regards to Lehman's books and records as
23 of the 22nd.

24 **Q. The stock records that you**
25 **described as the best available records, sir,**

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2 **did they show the securities that are listed**
3 **on Exhibit C as being for the account of prime**
4 **brokers?**

5 A. The list on Exhibit C, each one of
6 these accounts is a prime broker account, so
7 yes.

8 **Q. It is accurate, is it not,**
9 **Mr. Hraska, that prime brokers were not the**
10 **only type of customer Lehman had prior to the**
11 **closing who did not fully pay for their**
12 **securities; is that correct?**

13 A. That is true.

14 **Q. For example customers known as PIM**
15 **customers had securities with Lehman that they**
16 **didn't fully pay for; is that correct?**

17 A. Yes.

18 **Q. The same is true for the PAM**
19 **customers?**

20 A. Yes.

21 **Q. Was there a reason that the PIM**
22 **and PAM customers for example were not**
23 **included in the analysis that led to the**
24 **creation of Exhibit C?**

25 A. Mr. Azerad instructed us to take

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2 **the most conservative approach and to only**
3 **include prime brokerage customers in our**
4 **analysis.**

5 **Q. Why was that the most conservative**
6 **approach, sir?**

7 A. I don't know, that was his
8 opinion.

9 **Q. Do you have any understanding of**
10 **what Mr. Azerad meant when he said we should**
11 **take the most conservative approach and only**
12 **include prime broker customers in your**
13 **analysis?**

14 A. Just one more time read it back,
15 please.

16 (Record read.)

17 A. I don't know the specific reasons
18 or why he thought that. I do remember him
19 thinking that it was more conservative to do
20 so. So based on that we acted on his
21 instruction.

22 **Q. Did you have any discussion with**
23 **him about why this was the conservative**
24 **approach?**

25 A. I know that there were some

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2 discussions that were taking place about PIM
3 and PAM customers away from my organization.
4 So that may have had something to do with it,
5 but I would have to speculate whether it did
6 or didn't. So he instructed me -- as a matter
7 of fact I believe I might have run that past
8 Alister Blackwell and I think he agreed to use
9 that as a filter criteria and that is where it
10 was from my role.

11 **Q. In the situations where Lehman**
12 **rehypothecated the partly paid security that**
13 **is listed on, or any of the partly paid**
14 **securities that are listed on Exhibit C,**
15 **Mr. Hraska, is Barclays in connection with its**
16 **claim to the trustee for the securities listed**
17 **here assuming any liabilities to repay the**
18 **loan that is secured by these CUSIP's?**

19 MR. SHAW: Objection to the form.

20 Calls for a legal conclusion.

21 A. Repay the loan; they would have
22 extended the loan to the customer which is why
23 they claimed entitlement. They wouldn't have
24 taken a loan.

25 **Q. In the circumstances where they**

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2 pledged, Lehman --

3 A. Took loans to replace the cash?

4 Q. That was used to purchase the
5 CUSIP's that was partly paid for by the prime
6 broker customer, you understand that Lehman
7 has an obligation to pay that too?

8 A. I didn't realize that that is what
9 you were referring to. So based on that could
10 you please repeat the question to me.

11 (Record read.)

12 MR. SHAW: I object. Beyond the
13 scope of the 30(b)(6) testimony. It
14 lacks foundation. Calls for legal
15 conclusion.

16 THE WITNESS: Can I answer?

17 MR. SHAW: If you know the answer
18 you can answer.

19 A. Based on the previous testimony
20 these positions should have been in a stock
21 record location that we would have shown the
22 assets still being held in one of our
23 clearance boxes. If they were being financed
24 and the securities were no longer in our
25 possession we wouldn't have made any attempt

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2 to try to repay the loan in a scenario like
3 that, because under those scenarios as we
4 discussed earlier the person that we gave the
5 securities to would have kept them under the
6 default of the financing.

7 Q. Just back to the original creation
8 of Schedule B for a second. The instruction
9 came --

10 A. Schedule B, back to 32 then?

11 Q. Yes. Did the instruction from Mr.
12 Tonucci to identify unencumbered assets, was
13 that instruction limited to any particular
14 depository locations?

15 A. The initial request was not. So
16 we were to look at all clearance locations
17 available on the stock record which were not
18 fully paid for customers.

19 Q. Did you do so?

20 A. We did, yes.

21 Q. And the fruits of that initial
22 instruction and your labor consequent to that
23 instruction are reflected on Exhibit B; is
24 that correct?

25 A. That is correct. That was what we

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2 produced on that weekend which subsequently
3 became Schedule B. The one place we had some
4 difficulty on that weekend was we knew we had
5 a lot of physical securities in physical
6 locations and we were unable to confidently
7 determine what were firm physical securities
8 and what were not until later on. So that
9 further analysis that was done after the 22nd
10 yielded some physical securities that we felt
11 then confident later that we would be entitled
12 to.

13 So I think I would like to
14 clarify, I think I testified earlier that
15 there were no changes to the security list
16 initially put forth versus what was filed on
17 the 30th. I would like to amend that by
18 saying that the physical securities were added
19 to the list that was finally submitted on the
20 30th.

21 Q. To your knowledge were there any
22 other changes to the version of Schedule B
23 that was available at the closing of the
24 transaction on the 22nd and the finally
25 submitted Schedule B that was filed with the

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2 Bankruptcy Court on the 30th of September
3 other than this addition of physical
4 securities that you just testified to?

5 A. I believe there may have been some
6 discrepancies on some of the CUSIP's, but I
7 don't know what the materiality of those
8 discrepancies are. I think primarily they are
9 essentially the same.

10 Q. Did you personally add the
11 physical securities to the list, Schedule B?

12 A. I don't believe I personally added
13 the physical securities, no, I created the
14 initial list. I think Robert Azerad's team
15 did.

16 Q. Mr. Hraska, included on Schedule B
17 are a number of securities that are in
18 accounts other than the DTC; right?

19 A. Yes.

20 Q. That reflects your initial
21 instruction coming down from Mr. Tonucci that
22 you and the rest of the team involved in
23 gathering and identifying the securities
24 should look everywhere for available
25 inventory; is that accurate?

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<p>1 Hraska</p> <p>2 A. Yes, that is accurate.</p> <p>3 Q. That search for additional</p> <p>4 inventory, sir, that you and your team</p> <p>5 conducted subsequent to September 30th that</p> <p>6 led to the creation of Exhibits B and C that</p> <p>7 you testified to today also included search</p> <p>8 for inventory outside of the DTC boxes; is</p> <p>9 that correct?</p> <p>10 A. Yes, that is correct.</p> <p>11 Q. Do you know, Mr. Hraska, whether</p> <p>12 there were any residential mortgage securities</p> <p>13 that were identified as a separate category of</p> <p>14 assets that were to be purchased by Barclays</p> <p>15 under the original asset purchase agreement?</p> <p>16 MR. SHAW: Objection. Beyond the</p> <p>17 scope of the 30(b)(6). You already had</p> <p>18 your shot with him as an individual</p> <p>19 witness.</p> <p>20 Q. Do you know, sir?</p> <p>21 A. Just repeat the question.</p> <p>22 MR. OXFORD: If you want to go off</p> <p>23 for a second I can explain why I am</p> <p>24 asking the question. Off the record.</p> <p>25 (Recess taken.)</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 Hraska</p> <p>2 Q. Mr. Hraska, I am asking this</p> <p>3 question in your individual capacity, not as a</p> <p>4 30(b)(6) witness of Barclays. Do you know</p> <p>5 whether or not there were any residential</p> <p>6 mortgage backed securities that were</p> <p>7 identified as a separate category of assets</p> <p>8 that were to be transferred to Barclays under</p> <p>9 the original asset purchase agreement?</p> <p>10 MR. SHAW: Objection. Foundation.</p> <p>11 A. Read it back, please.</p> <p>12 (Record read.)</p> <p>13 A. I believe that there was, but they</p> <p>14 would have been included in the assets that</p> <p>15 were available to be transferred in the</p> <p>16 overall list. So there was a discussion about</p> <p>17 residential mortgages, but those resided in</p> <p>18 the same clearance boxes and locations as the</p> <p>19 other securities that were in question.</p> <p>20 Q. Do you know whether those</p> <p>21 residential mortgage securities ended up on</p> <p>22 Schedule B?</p> <p>23 MR. SHAW: Objection.</p> <p>24 Q. Do you know whether any of those</p> <p>25 residential mortgage securities that were</p> <p>TSG Reporting - Worldwide 877-702-9580</p>
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<p>1 Hraska</p> <p>2 identified as a separate category in the</p> <p>3 original APA ended up being included on</p> <p>4 Schedule B to the clarification letter?</p> <p>5 MR. SHAW: Objection. Foundation.</p> <p>6 A. I am sorry, can you read that back</p> <p>7 again.</p> <p>8 (Record read.)</p> <p>9 A. I don't know for a fact, but it is</p> <p>10 plausible that some of them might have ended</p> <p>11 up on Schedule B based off of the criteria</p> <p>12 that was used to create Schedule B.</p> <p>13 Q. If I asked you the same question</p> <p>14 with respect to Exhibits A and B would you</p> <p>15 have the same answer?</p> <p>16 A. Exhibits A and B?</p> <p>17 Q. Yes.</p> <p>18 A. Its possible that Exhibits A and B</p> <p>19 would have contained that asset class, but it</p> <p>20 is less likely.</p> <p>21 Q. Why is it less likely, sir?</p> <p>22 A. Because those asset classes were</p> <p>23 held in a different system.</p> <p>24 Q. Which two systems are you talking</p> <p>25 about in your testimony here?</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 Hraska</p> <p>2 A. The residential mortgages would</p> <p>3 have been held in the system called MTS, and</p> <p>4 would have been held in a clearance box DTC</p> <p>5 participant ID 636.</p> <p>6 Q. I take it that these two locations</p> <p>7 for the residential mortgage securities were</p> <p>8 not sources that you were looking at for the</p> <p>9 compilation of the data that led to Exhibits A</p> <p>10 and B; is that correct?</p> <p>11 A. That is correct, yes.</p> <p>12 Q. You mentioned that there were some</p> <p>13 conversations about residential mortgage</p> <p>14 securities. What were you referencing?</p> <p>15 A. Trying to recall, it was a long</p> <p>16 time ago. I honestly don't recall the</p> <p>17 specifics. I remember us talking about</p> <p>18 residential mortgages. I remember us talking</p> <p>19 about where were they located. Would they be</p> <p>20 physically able to be moved as part of the</p> <p>21 asset purchase agreement to Barclays. What</p> <p>22 type of assets were they, were they DTC or</p> <p>23 physical, that type of stuff. Beyond that I</p> <p>24 don't remember much more.</p> <p>25 Q. Who is the "us" that you are</p> <p>TSG Reporting - Worldwide 877-702-9580</p>

1 Hraska
2 talking about?

3 A. It would have been some of the
4 same folks mentioned earlier. It would have
5 been myself, Neil Ullman, Robert Azerad, Paolo
6 Tonucci primarily.

7 Q. Do you know whether any of those
8 residential mortgage backed securities were
9 transferred back to Barclays as part of the
10 Fed settlement securities?

11 A. Is that part --

12 MR. SHAW: No, it is not part of
13 the 30(b)(6).

14 Q. The whole line of questioning
15 relates to your individual.

16 A. Okay. I didn't know if we were
17 still -- it is very possible that some of the
18 residential mortgages ended up in the
19 transaction from the 18th, which was the repo
20 transaction.

21 Q. Why do you say that it is very
22 possible?

23 A. They were an asset class which was
24 available in the DTC location 636. So we were
25 pledging assets from that location. So it is

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1 Hraska

2 possible that some assets classified as
3 residential mortgages made their way to
4 Barclays on the night of the 18th.

5 Q. If you wanted to determine whether
6 that possibility was in fact actuality, how
7 would you go about finding that out?

8 A. Well there is a list of what -- a
9 CUSIP list of what was sent over to Barclays
10 as a result of the transaction that took place
11 on that night.

12 Q. Uh-hum.

13 A. Which confirmed the deliveries by
14 both parties of being delivered and received,
15 and you could look up the CUSIP's and their
16 asset classes and determine whether any of
17 those were residential mortgages or not.

18 Q. Do you have a list of the
19 residential mortgage securities that were
20 originally identified in the asset purchase
21 agreement that you could compare to the list
22 of CUSIP's that were delivered to Barclays on
23 the 18th?

24 A. I don't personally have a list,
25 but I am sure a list -- well, I am not sure.

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1 Hraska
2 A list may exist somewhere. If provided a
3 list we could do it.

4 Q. Do you have any personal knowledge
5 as to whether such a list exist?

6 A. I know there was talk of a list
7 about residential securities. I don't know
8 whether -- at one point there was a list of
9 securities, but I honestly don't -- I don't
10 recall much more than that. I know there was
11 talk of putting a list together.

12 Q. With whom was there talk?

13 A. The talk I had would have been
14 with the same people mentioned before about
15 determining whether or not we could move those
16 assets over to Barclays or not. Where they
17 were residing and whether they were physical
18 form or book entry form.

19 Q. Would that conversation have taken
20 place prior to closing, sir?

21 A. That conversation would have taken
22 place prior to closing, yes.

23 Q. And the people you identified
24 before, can you just, so we have a clear
25 record, the people you think were involved in

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1 Hraska
2 this conversation you testified to moments ago
3 were whom; did they include Mr. Azerad?

4 A. It would have been Azerad,
5 Tonucci, myself, Ullman. I am not sure
6 whether Blackwell or not, but most likely
7 Blackwell also.

8 Q. I just have one clarified question
9 suggested by your counsel here. If you can
10 have in front of you Exhibits 563-D and 564-D,
11 if you look at the last two lines of Exhibit
12 564-D, do those help you fill in the blank
13 that we left in the transcript earlier?

14 A. Yes.

15 Q. Which was to amend downwards the
16 quantity of CUSIP's that Barclays is claiming
17 for the last two CUSIP's -- sorry, the last
18 two lines in Exhibit C, Met Life and Net Gear?

19 A. Yes. If you go from the far right
20 column and go in two columns there is a column
21 called entitlement position. If you go down
22 to the last two rows the quantities listed in
23 entitlement position would be what Barclays
24 would claim.

25 Q. So in exhibit --

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1 Hraska

2 A. 5,017 for Met Life, and 476 for
3 Net Gear.

4 MR. OXFORD: Thank you,
5 Mr. Hraska. I don't have any further
6 questions for you at this time, I think
7 Mr. Hine has a couple of questions.

8 EXAMINATION BY

9 MR. HINE:

10 Q. I just want to take a couple of
11 minutes of your time, I know you have to
12 leave. Just to be clear these are questions
13 that I am asking of you in your capacity as a
14 30(b)(6) witness.

15 A. Yes.

16 Q. Do you recall in response to some
17 of Mr. Oxford's questions he talked about the
18 \$1.9 billion target that you folks at Lehman
19 were shooting for when you were assembling the
20 assets that would later become Schedule B. Do
21 you remember that testimony?

22 A. Yes.

23 Q. I just want to drill down a little
24 on that target. I believe you testified that
25 that number, that target was communicated to

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1 Hraska

2 you by Mr. Tonucci; is that correct?

3 A. Yes.

4 Q. Do you know where that target
5 originated from?

6 MR. SHAW: Objection. Foundation.

7 A. I believe as a 30(b)(6) it was in
8 the conversations he was having regarding the
9 purchase agreement. But he didn't specify
10 that.

11 Q. Mr. Tonucci wasn't acting alone in
12 coming up with the target; right?

13 MR. SHAW: Objection. Foundation.

14 A. I don't believe he did, no.

15 MR. SHAW: We are way beyond the
16 scope of 30(b)(6).

17 MR. HINE: We are talking about
18 the origin of Schedule B.

19 Q. Can you tell me whether that \$1.9
20 billion target originated from the Barclays
21 side of the transaction or the Lehman side of
22 the transaction; if you know?

23 MR. SHAW: Continuing objection.

24 Beyond the scope of the 30(b)(6), but you
25 can answer if you know.

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1 Hraska

2 A. I believe it originated from the
3 Lehman side of the transaction.

4 Q. And on what do you base that
5 belief?

6 MR. SHAW: Same objection.

7 A. I believe Mr. Tonucci was getting
8 those numbers from assets that he considered
9 unencumbered which were -- which were on a
10 report out of that GFS system that we talked
11 about called non-actionable, meaning financed
12 with the firm's capital.

13 Q. Why do you believe he was getting
14 them from that; I guess I didn't understand
15 that answer.

16 MR. SHAW: Same objections.

17 Q. Do you know why those types of
18 assets -- scratch that.

19 Why were non-actionable assets
20 used to develop the \$1.9 billion target?

21 MR. SHAW: Objection. Beyond the
22 scope of the 30(b)(6).

23 A. I believe the reason he went to
24 actionable versus non-actionable were, the
25 non-actionable security was typically one that

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1 Hraska

2 was classified as something that the front end
3 financing systems might not have been able to
4 typically use in a financing transaction --
5 secured financing transaction. Something that
6 customers possibly are going to provide
7 liquidity wouldn't necessarily take. However
8 it didn't mean that they didn't necessarily
9 have value, it just wouldn't be an asset class
10 or anything that potentially a liquidity
11 provider would give.

12 The repo transaction would have
13 used tools because it was a repo, which was
14 secured financing. That transaction would
15 have used very similar type criteria as to
16 what were asset classes that would typically
17 be more actionable as opposed to
18 non-actionable. So because on the night of
19 the 18th Lehman ended up being short
20 collateral to deliver to Barclays and have to
21 take a cash loan, I think Mr. Tonucci felt
22 that there may have been other securities
23 which had value but wouldn't have normally
24 have been available or eligible to pledge on a
25 secured financing transaction.

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1 Hraska
2 So therefore he wanted to look at
3 those securities and their locations and
4 determine whether they were physically able to
5 be moved to Barclays as a result of the
6 transaction.
7 **Q. I think I understand.**
8 So during that effort to locate
9 these additional assets to be transferred to
10 Barclays was there some consequence associated
11 with not meeting this \$1.9 billion target?
12 MR. SHAW: Objection. Beyond the
13 scope of the 30(b)(6). Foundation.
14 A. Can you define consequence?
15 **Q. Was Barclays not going to close if**
16 **you didn't meet the \$1.9 billion?**
17 MR. SHAW: This is so far beyond
18 the scope of the 30(b)(6).
19 MR. HINE: This is the origin of
20 Schedule B. This is the --
21 MR. SHAW: No. The origin of
22 Schedule B is a far more discreet topic.
23 I mean under your theory the fact that
24 Lehman went bankrupt would be something
25 that you would be entitled to because
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1 Hraska
2 done it a couple of times, but if this
3 30(b)(6) subpoena, I am going to keep flipping
4 back and forth, I am happy to answer --
5 MR. SHAW: Off the record for a
6 second.
7 (Recess taken.)
8 **Q. Back on the record.**
9 A. So I apologize, could you repeat
10 the question to me.
11 (Record read.)
12 MR. SHAW: Objection. Foundation.
13 This is an individual question, not
14 30(b)(6).
15 MR. HINE: I asked it in a
16 30(b)(6), I note your objection, and he
17 is not answering the 30(b)(6), so I would
18 like his answer as an individual.
19 A. As an individual, as a Lehman
20 employee at that time I had no knowledge as to
21 whether Barclays would close or not.
22 **Q. Did your team assembling these**
23 **assets that would eventually become Schedule B**
24 **in fact meet that target?**
25 A. The target of raising assets which
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1 Hraska
2 absent the bankruptcy we wouldn't have
3 had a deal and so forth. At some point
4 we have to draw a line between the origin
5 of Schedule B and everything that led up
6 to the transaction.
7 MR. HINE: That entire weekend is
8 assembling the assets that eventually
9 become Schedule B. I am just asking --
10 MR. SHAW: I continue to object.
11 Way beyond the scope of the 30(b)(6). I
12 will let him answer if he knows anything
13 about this. But it is not something that
14 he has been put forth as a 30(b)(6)
15 witness on and he is not prepared on
16 this.
17 A. Repeat the question, please.
18 (Record read.)
19 MR. SHAW: Same objections.
20 **Q. If you know?**
21 A. As a 30(b)(6) witness I can't
22 answer that question.
23 **Q. In your individual capacity do you**
24 **know; I am asking you --**
25 A. I guess my question is, we have
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1 Hraska
2 had a value of --
3 **Q. The \$1.9 billion target that Mr.**
4 **Tonucci communicated to you?**
5 A. Yes, we did.
6 **Q. Did you exceed that target?**
7 A. Yes, we did.
8 **Q. By how much?**
9 A. Without having my spreadsheets, to
10 approximate I would say 300ish million.
11 **Q. Why didn't you stop when you met**
12 **the target?**
13 A. We didn't stop because I was asked
14 from my perspective from an operational
15 perspective did we feel that -- what was the
16 probability of us being able -- what were the
17 mechanical probabilities of us being able to
18 actually deliver assets to Barclays that were
19 located in the various locations that we
20 found.
21 Some of the locations were
22 locations which were held by custodial banks
23 outside the U.S., and as a result of the
24 holding situation some of those accounts, our
25 access had been frozen. So even though the
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securities showed as unencumbered, the probability of us being able to action or move any of those securities was very likely not going to happen.

So based on that we tried to assemble as much unencumbered collateral as we could in locations where we still felt we had the capability to action that collateral and deliver it to Barclays.

Q. So when you assembled this additional 300 million in assets that you testified about --

A. Can I stop you there?

Q. Yes.

A. There was never an assemblage of an additional 300, there was an assemblage of approximately 2 point something billion of which we felt that 300 of it was not going to be very easy to transfer.

Q. So once you assembled that 2 point something billion you stopped in your search for additional assets; is that correct?

A. At that time that is what the entire exercise yielded. It is not that we

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stopped, it was what the total result was.

Q. When did you get to this 2 point something billion figure?

A. Specific time?

Q. Like over the weekend?

A. Very late Sunday, I don't remember -- potentially into the hours of Monday morning. We pretty much -- I didn't sleep that whole weekend, so I don't know what point.

Q. Can you turn for a minute to your Exhibit 562-D which is your notes we talked about today?

A. Yes.

Q. In the first sentence of the section under topic 32-A I would like to refer you to that sentence which reads: Schedule B was referenced in the clarification letter representing the parties best effort based on the information available at the time to list the clearance box securities that Barclays was entitled to receive.

Do you see that?

A. I do.

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Q. What do you mean by the phrase entitled to receive in that context?

A. Entitled to receive as a result of the purchase agreement.

Q. And how does that relate, the concept of what they are entitled to receive relate to the \$1.9 billion target that we were talking about?

MR. SHAW: Objection to the form.

A. They were entitled to receive clearance box securities as per the selection criteria. What was returned were clearance box securities for which customers had not fully paid for them.

Q. I guess my question is were they entitled to receive all clearance box securities for which customers had not paid, or did you think they were entitled to receive \$1.9 billion of such securities?

MR. SHAW: Objection. Foundation. Beyond the scope. Calls for a legal conclusion. Speaks for itself.

A. I think they were entitled to receive all clearance box securities that were

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not fully paid for.

Q. Then I guess I don't understand why you had a \$1.9 billion target?

A. I didn't -- I was given that target. So I testified as to where I think that target came from. As to why I had that target I honestly don't know.

Q. I understand. I guess my question is was the \$1.9 billion target a quantification of what the parties thought Barclays was entitled to receive, or did it come from some other basis?

MR. SHAW: Objection. Calls for legal conclusion. Beyond the scope of the 30(b)(6). Lack of foundation.

If you know you can try to answer this in your individual capacity.

Q. If you know?

A. Can you repeat the question again. (Record read.)

MR. SHAW: I would add the further objection that it is vague as to time.

Q. During that weekend?

MR. SHAW: It is still vague as to

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Hraska

time because it matters very much whether you are talking before or after the agreement that is reflected in the clarification letter that was written.

Q. You can answer the question?

MR. SHAW: With all of my objections.

A. I believe it was Mr. Tonucci's impression of what Barclays was entitled to receive based off of the analysis that he did prior to that instruction.

Q. Analysis of what?

A. Analysis of the unencumbered list -- not the unencumbered list, the non-actionable list. His feeling was that there had to be off of his analysis at least \$1.9 billion of assets which were not being used for secured financing transactions which is evidenced by the fact that they were not used the previous night.

Therefore he asked us to look for all unencumbered clearance box assets, and his opinion was that there should be at least \$1.9 billion because that is what he deemed to show

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up on this non-actionable list. That should add some clarity to it. So the search yielded more than the \$1.9 billion which was great because we were able to capture the securities that potentially Mr. Tonucci felt would have been eligible for transfer.

But on the further analysis as previously testified we didn't deem that all those securities would be probable to deliver, therefore we removed them from the initial result.

MR. HINE: That is all I have, thank you.

MR. SHELLEY: No questions.

MR. OXFORD: Nothing further.

Thank you.

MR. SHAW: No questions.

(Time noted 3:34 p.m.)

JIM HRASKA

Subscribed and sworn to before me this ____ day of _____, 2010

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C E R T I F I C A T E
STATE OF NEW YORK)
: ss.
COUNTY OF NEW YORK)

I, Philip Rizzuti, a Notary
Public within and for the State of New
York, do hereby certify:

That JIM HRASKA, the witness
whose deposition is hereinbefore set forth,
was duly sworn by me and that such
deposition is a true record of the
testimony given by the witness.

I further certify that I am not
related to any of the parties to this
action by blood or marriage, and that I am
in no way interested in the outcome of this
matter.

IN WITNESS WHEREOF, I have
hereunto set my hand this 16th day of
January, 2010.

PHILIP RIZZUTI

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----- I N D E X -----
WITNESS EXAMINATION BY PAGE
JIM HRASKA Mr. Oxford 6
Mr. Hine 150

----- INFORMATION REQUESTS -----
DIRECTIONS: 58, 62
RULINGS: None
TO BE FURNISHED: 123
REQUESTS: 57
MOTIONS: None

----- EXHIBITS -----
Exhibit 561-D, spreadsheets, 6
Exhibit 562-D, document headed 6
Jim Hraska 30(b)(6) deposition
notes,
Exhibit 563-D, one-page document 118
headed Exhibit C-Additional
Clearance Box Securities,
Exhibit 564-D, document headed 118
732 Accounts With Securities
That May Be Potential Firm
Claims If Firm Financed,
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1 C. JONES

2 UNITED STATES BANKRUPTCY COURT

3 SOUTHERN DISTRICT OF NEW YORK

4 -----x

5 In Re:

6 Chapter 11

7 LEHMAN BROTHERS

Case No. 08-13555(JMP)

8 HOLDINGS, INC., et al., (Jointly Administered)

9 Debtors.

10 -----x

11
12
13
14 DEPOSITION OF CRAIG JONES

15 New York, New York

16 March 4, 2010

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23 Reported by:

24 KATHY S. KLEPFER, RMR, RPR, CRR, CLR

25 JOB NO. 28628

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1 C. JONES
2 break at any time, please just let me know.
3 I'll be happy to accommodate you.
4 If you don't understand any of my
5 questions, please let me know; I'll be happy to
6 rephrase them. And if you do answer my
7 questions, I will assume that you have
8 understood it be. Is that fair?
9 A. Yes.
10 Q. How long were you employed by Lehman,
11 sir?
12 A. Nine and a half years.
13 Q. Were you always in the Treasury
14 Department for that time, sir?
15 A. Yes.
16 Q. What was your title when you first
17 joined Lehman?
18 A. Vice President, Creditor Relations.
19 Q. How long were you in that position,
20 sir?
21 A. Four years. Maybe five.
22 Q. What was your next position?
23 A. Vice President, Cash and Collateral
24 Management.
25 Q. How long were you in that position

Page 8

1 C. JONES
2 A. Yes.
3 MS. BLOOMER: Objection to form.
4 Q. Can you describe for me those other
5 methodologies through which the OCC would
6 communicate its margin requirements to Lehman?
7 A. Can you repeat that?
8 Q. Sure.
9 (Record read.)
10 A. My understanding is generally it would
11 be in a phone call to somebody on my team that
12 there's a margin call.
13 Q. When you say generally Lehman would
14 get a report in the morning, is that an e-mail
15 report that would be sent? How is that report
16 communicated?
17 A. I know most recently it has been
18 through their Website.
19 Q. Focusing on the timeframe of September
20 2008, sir, how were -- how did Lehman learn of
21 the OCC's margin and clearing fund requirements?
22 MS. BLOOMER: Objection. Lacks
23 foundation.
24 Q. Do you have my question in mind, sir?
25 A. Sorry. Can you repeat that?

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1 C. JONES
2 for?
3 A. Five years.
4 Q. Was that until you joined Barclays?
5 A. Yes.
6 Q. Was it in the position of Vice
7 President, Cash and Collateral Management that
8 you were responsible for managing the margin and
9 clearing fund deposits at the OCC?
10 A. At that time I was a senior vice
11 president.
12 Q. But otherwise, the answer is "yes"?
13 A. Yes.
14 Q. Can you tell me what you mean by
15 managing the margin and clearing fund deposits?
16 A. My team would ensure that the OCC
17 requirement is funded every day.
18 Q. And how would the OCC communicate
19 these requirements to Lehman, sir?
20 A. Generally, we would get a report in
21 the morning.
22 Q. Were there times when you wouldn't get
23 a report in the morning and the requirement
24 would be communicated in some other way by the
25 OCC?

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1 C. JONES
2 (Record read.)
3 A. It was -- it was largely the same way,
4 the same process of, you know, viewing the
5 report in the morning, subject to any other call
6 that they would make.
7 Q. Is it correct that one of your team
8 would view a report on the OCC's systems that
9 Lehman had access to?
10 A. That's right.
11 Q. What's the name of that system, sir?
12 A. I'm not sure.
13 Q. Which members of your team in
14 September 2008 had responsibility for viewing
15 the information on the OCC system to determine
16 the margin requirements?
17 A. The primary person at the time was
18 Sharon Blake.
19 Q. Was there a secondary person at the
20 time, sir?
21 A. I'm sure there would have been.
22 Q. Do you know who that was?
23 A. I can't recall.
24 Q. Was the margin that your team was
25 responsible for managing related to equity

3 (Pages 6 to 9)

Page 14

1 C. JONES
2 A. It's more of a sort of a general
3 understanding, you know, market knowledge, I
4 guess.
5 Q. In paragraph 4 you state that, "The
6 OCC has its own proprietary methods for setting
7 margin and clearing fund requirements," sir.
8 You see that?
9 A. Yes.
10 Q. Are you familiar with how it is the
11 OCC sets its margin and clearing fund
12 requirements?
13 A. No.
14 Q. Do you know how it's calculated?
15 A. No.
16 Q. Do you know, sir, whether or not
17 Lehman traded equity options other than through
18 the OCC?
19 A. I don't know.
20 Q. Are you familiar, Mr. Jones, with the
21 various margining levels that the OCC applies to
22 its clearing members?
23 MS. BLOOMER: Objection to form.
24 A. No.
25 Q. To your understanding, are all of

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1 C. JONES
2 A. Yes.
3 Q. Tell me about those conversations,
4 please.
5 MS. BLOOMER: Objection to form.
6 A. We were expecting about \$400 million
7 back on Friday, the 19th of September, and it
8 didn't come back, obviously, so I called the OCC
9 to find out why.
10 Q. Who did you speak to at the OCC?
11 A. I can't recall.
12 Q. Did the OCC explain to you why this
13 400 million that you were expecting to come back
14 did not come back?
15 A. Not in detail, no.
16 Q. Please tell me everything you remember
17 about that telephone call.
18 A. Generally, they reserved the right to
19 take any collateral -- I can't remember the
20 exact phrasing of the call, but they couldn't --
21 they had -- they reserved the right to increase
22 their requirement. I vaguely remember something
23 about going a hundred percent or increasing the
24 requirement.
25 Q. Did you take any notes of those calls,

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1 C. JONES
2 OCC's clearing members margined at the same
3 level and in the same way?
4 A. I don't know.
5 Q. In your time at Lehman, did the manner
6 in which LBI was margined at the OCC changed?
7 A. I don't think I'd know.
8 Q. And you wouldn't know because it was
9 simply your responsibility to meet the funding
10 requirements on a day-to-day basis, whatever
11 those funding requirements may be; is that
12 correct?
13 MS. BLOOMER: Objection to form.
14 A. Generally, yes.
15 Q. Do you know whether LBI was on a watch
16 list at the OCC in September 2008?
17 MS. BLOOMER: Objection to form.
18 A. I'm not aware.
19 Q. Did you have any conversations with
20 anyone at any time, sir, about the OCC
21 increasing its margin requirements for Lehman in
22 September 2008?
23 MS. BLOOMER: Object to the form.
24 A. Sorry, can you repeat the question?
25 (Record read.)

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1 C. JONES
2 sir?
3 A. I don't recall.
4 Q. Was there just one telephone call or
5 more than one with the OCC on this subject on
6 the 19th?
7 A. Yeah, I don't recall.
8 Q. Do you recall sending any e-mails
9 reporting the conversation with the OCC?
10 A. I'm not sure if it's a privilege
11 question or not.
12 MS. BLOOMER: The question is just do
13 you recall sending any e-mails, so I don't
14 think it would call for privileged
15 information.
16 A. I don't recall.
17 Q. You don't recall one way or the other
18 whether you sent any e-mails on this subject,
19 sir, to report what the OCC had told you on the
20 19th, is that -- is that your testimony?
21 MS. BLOOMER: Objection. Asked and
22 answered.
23 A. Yes, I don't recall.
24 Q. Do you remember discussing your
25 conversation with the OCC on the 19th with

5 (Pages 14 to 17)

Page 22	Page 23
<p>1 C. JONES</p> <p>2 matter?</p> <p>3 A. I can't recall at that time. She</p> <p>4 probably reported in to somebody -- sorry.</p> <p>5 Sorry. She reported to somebody else.</p> <p>6 Q. Who was that someone else, sir?</p> <p>7 A. Carol Keith.</p> <p>8 Q. Carol Keith?</p> <p>9 A. Yes.</p> <p>10 Q. What was Carol Keith's role?</p> <p>11 A. She was responsible for the, what we</p> <p>12 called the Cash Control Team.</p> <p>13 Q. And did Carol Keith report directly in</p> <p>14 to you?</p> <p>15 A. I believe so.</p> <p>16 Q. Carol Keith does not appear on this</p> <p>17 e-mail, correct?</p> <p>18 A. That's right.</p> <p>19 Q. Do you have any understanding of why</p> <p>20 Carol Keith doesn't appear on the e-mail but you</p> <p>21 do?</p> <p>22 MS. BLOOMER: Objection. Lacks</p> <p>23 foundation.</p> <p>24 A. Yeah, I'm not sure.</p> <p>25 Q. Can you turn over the page in your</p>	<p>1 C. JONES</p> <p>2 declaration to the second page of your e-mail,</p> <p>3 sir.</p> <p>4 A. I'm just trying to remember</p> <p>5 specifically Sharon's reporting line, that's</p> <p>6 what I'm hesitating on, at the time. Because</p> <p>7 things have been moved around a bit. So I can't</p> <p>8 say for sure it was Carol Keith. It could have</p> <p>9 been Tamir Shafir, who's on here. I can't</p> <p>10 recall for sure. I just am not clear.</p> <p>11 Q. Thank you. Could you turn overleaf,</p> <p>12 sir, looking at what is the second page of</p> <p>13 Exhibit 2 to your declaration, do you know the</p> <p>14 source of the data contained there?</p> <p>15 A. Not for sure.</p> <p>16 Q. What's your best understanding of the</p> <p>17 source of that data, sir?</p> <p>18 MS. BLOOMER: Objection. Lacks</p> <p>19 foundation.</p> <p>20 A. I would have expected it to be the OCC</p> <p>21 Website.</p> <p>22 Q. In your declaration at paragraph 5,</p> <p>23 sir, you say, "In general, prior to September</p> <p>24 2008, LBI posted collateral primarily in the</p> <p>25 form of treasury securities and letter of</p>
Page 24	Page 25
<p>1 C. JONES</p> <p>2 credit." Do you see that, sir?</p> <p>3 A. Yes.</p> <p>4 Q. Then in paragraph 14, you explain how,</p> <p>5 by the opening of business on September 28,</p> <p>6 2008, there was approximately \$1.1 billion of</p> <p>7 cash in the LBI OCC account posted as margin.</p> <p>8 Do you see that, sir?</p> <p>9 MS. BLOOMER: Objection. I think you</p> <p>10 misspoke. You said September 28 instead of</p> <p>11 September 22.</p> <p>12 MR. OXFORD: Sorry. I misspoke. If</p> <p>13 that's true, I meant September 22. Thanks,</p> <p>14 Trish.</p> <p>15 A. Sorry. What's the question?</p> <p>16 Q. Do you see in paragraph 14, sir, how</p> <p>17 you describe that on September 22, 2008, as of</p> <p>18 the opening of business, approximately \$1.1</p> <p>19 billion of cash was posted at the OCC by way of</p> <p>20 clearing fund and margin, do you see that, sir?</p> <p>21 MS. BLOOMER: Objection. I don't</p> <p>22 think it says that any of the cash was</p> <p>23 clearing fund. It mischaracterizes the</p> <p>24 document.</p> <p>25 Q. Do you know, sir, what the reason was</p>	<p>1 C. JONES</p> <p>2 for the change between the general statement</p> <p>3 about Lehman's practice prior to September 2008</p> <p>4 of posting collateral at the OCC in the form of</p> <p>5 treasury securities and letters of credit and</p> <p>6 why, by September 22, there was over a billion</p> <p>7 dollars of cash posted at the OCC?</p> <p>8 A. Can you repeat that?</p> <p>9 (Record read.)</p> <p>10 A. I don't remember the date, but our</p> <p>11 settlement bank, Bank of America, closed our</p> <p>12 bank account for the OCC. At that point, the</p> <p>13 only way to settle with them in the time --</p> <p>14 settle with them was by wiring money directly to</p> <p>15 the OCC, to their bank.</p> <p>16 Q. Just trying to narrow down the date,</p> <p>17 sir, on which the bank, Bank of America, closed</p> <p>18 down Lehman's account for the OCC, was it in the</p> <p>19 week beginning September 15, 2008?</p> <p>20 A. I can't remember.</p> <p>21 Q. Again, just to press on this just a</p> <p>22 little bit, sir, you started to work at Barclays</p> <p>23 on the 22nd of September, 2008?</p> <p>24 MS. BLOOMER: Objection. Assumes</p> <p>25 facts not in evidence.</p>

C. JONES

THE WITNESS: What was that?

MS. BLOOMER: I said, "Objection.
Assumes facts not in evidence."

Q. I don't think it's controversial since
you say that in paragraph 2 of your declaration.

A. Okay, if that's what it says.

MS. BLOOMER: Maybe it is in evidence.

A. Sorry, did you say was I employed
September 22 with Barclays?

Q. Yes. I'm just trying to orient you as
to the timing, sir. Focusing on the fact that
your employment with Barclays started on the
22nd of September, 2008, which I will represent
to you is the date of the closing of the sale
transaction between Lehman and Barclays?

A. Okay.

Q. Does that date help you recall with
any more precision when it was Bank of America
closed down Lehman's account at the OCC?

A. No. It was, you know -- I can't
remember if it was the week before or the two
weeks before. I can't ...

Q. The assets that Lehman posted by way
of margin and clearing fund at the OCC were

C. JONES

LBI's proprietary assets, weren't they, sir?

A. That's correct.

Q. Do you know whether customers and
affiliates who had their options positions
placed through LBI at the OCC also provided
collateral to LBI?

A. I don't know.

Q. When the OCC communicated to your team
a need for additional margin in September 2008,
sir, how would you and your team go about
meeting that request or requirement?

A. I'm sorry, which date are you asking?

Q. Generally in September 2008, sir.
What was the practice if, hypothetically, the
OCC had required LBI to post an additional \$300
million --

A. Right.

Q. -- say on September 1?

A. Okay.

Q. What would you and your team do next?

A. They would generally either post
additional treasuries, or if we had letters of
credit available, they would use letters of
credit.

C. JONES

Q. To your knowledge, sir, was there any
limit placed by the OCC on the amount of
collateral that could be posted at the OCC by
way of letters of credit?

A. For Lehman?

Q. Yes.

A. The OCC has limits around any -- they
have specific banks that they will allow letters
of credit from, but I'm not aware of any
specific limits on Lehman per se.

Q. To your understanding, sir, could
Lehman have met a hundred percent of its margin
and clearing fund requirements at the OCC by way
of letters of credit?

MS. BLOOMER: Objection, form and
calls for speculation.

A. I mean, that's sort of a -- you know,
there's assumptions in there that I'd have to
make. You know, do we have an infinite amount
of letters of credit available to us?

Q. On the assumption that Lehman
possessed sufficient letters of credit, are you
aware, sir, one way or the other whether or not
the OCC had any limits on the satisfaction of

C. JONES

its margin and clearing fund requirements by way
of letters of credit?

A. Can you repeat that?

(Record read.)

A. Again, other than the limits posed by
the OCC for the specific banks, I'm not aware of
anything else. I don't recall anything else.

Q. Other than your responsibility, sir,
in managing the margin and clearing fund
requirements for the OCC, did you have any other
responsibilities that in any way related to
Lehman's exchange-traded derivatives trading?

MS. BLOOMER: Objection to form.

A. Sorry. Can you be more specific?

Q. I'm afraid I can't, sir, because I'm
asking a general question to find out what -- I
don't know what you did, so I'm trying to find
out generally what you did.

A. Again, can you repeat that question?

(Record read.)

A. I guess that's what's sort of throwing
me. You know, I guess you're using the term
"exchange-traded derivatives." We wouldn't be
looking at it in that context.

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<p>1 C. JONES</p> <p>2 Sorry. Can you repeat the question?</p> <p>3 Q. Is the difficulty with my question,</p> <p>4 sir, because you didn't -- to the extent you</p> <p>5 dealt with exchange-traded derivatives, they</p> <p>6 were not separated from over-the-counter</p> <p>7 derivatives?</p> <p>8 A. I wouldn't really be looking at</p> <p>9 anything from the perspective of whether it's a</p> <p>10 derivative or not. I'd be looking at what the</p> <p>11 funding requirement is for any particular</p> <p>12 clearing house or exchange. So I didn't</p> <p>13 differentiate between the underlying products.</p> <p>14 Q. Okay. You say in your declaration,</p> <p>15 sir, that one of your team's regular</p> <p>16 responsibilities was to minimize the amount of</p> <p>17 excess margin maintained by LBI at the OCC. Can</p> <p>18 you tell me why that is, please?</p> <p>19 A. We don't earn any return on excess</p> <p>20 left at the OCC.</p> <p>21 Q. I see. So it's an efficient use of</p> <p>22 capital, in essence?</p> <p>23 A. Exactly.</p> <p>24 Q. When the daily margin requirement was</p> <p>25 computed by the OCC and showed an excess, sir,</p>	<p>1 C. JONES</p> <p>2 was it Lehman's practice in September 2008 to</p> <p>3 request the withdrawal of 100 percent of that</p> <p>4 excess or some number less than 100 percent?</p> <p>5 A. Generally, we should be pulling back</p> <p>6 everything. There's obviously rounding issues</p> <p>7 when you're dealing with treasury securities</p> <p>8 that you can't get 100 percent back, so there</p> <p>9 might be something -- we couldn't go below the</p> <p>10 requirement, obviously. So there might be a</p> <p>11 minute amount excess over.</p> <p>12 Q. Can you turn to Exhibit 3 to your</p> <p>13 declaration, sir.</p> <p>14 MS. BLOOMER: They're not numbered, so</p> <p>15 you might just want to --</p> <p>16 A. Can you tell me the head line?</p> <p>17 Q. It's the third one after, sir.</p> <p>18 MS. BLOOMER: I think it's the one</p> <p>19 with the zero, zero, zero at the top.</p> <p>20 Q. I'll identify it. It's the e-mail</p> <p>21 from Sharon Blake on Friday, September 19, 2008</p> <p>22 at 14:19:43 GMT.</p> <p>23 A. Right. Got it.</p> <p>24 Q. And the subject line is "Forward: OCC</p> <p>25 for today/Revised Copy." Do you see that?</p>
Page 32	Page 33
<p>1 C. JONES</p> <p>2 A. Yes. Carol Keith is on this one.</p> <p>3 Q. Does this refresh your recollection</p> <p>4 one way or the other, sir, about the reporting</p> <p>5 chain to Sharon Blake?</p> <p>6 A. No. It makes me more confused.</p> <p>7 Q. I'm glad I'm not alone in that</p> <p>8 respect.</p> <p>9 And you'll see down the chain, sir,</p> <p>10 there's the original e-mail that we looked at a</p> <p>11 few moments ago at 9:32 A.M. in which Sharon</p> <p>12 Blake communicates the OCC's daily requirements,</p> <p>13 including the excess of \$401 million, do you see</p> <p>14 that?</p> <p>15 A. Yes.</p> <p>16 Q. Under the e-mail at the top of the</p> <p>17 chain, Ms. Blake sends a revised set of</p> <p>18 requirements which appears to show an excess of</p> <p>19 zero, do you see that?</p> <p>20 A. Yes.</p> <p>21 Q. Other than this e-mail, did Sharon</p> <p>22 Blake communicate the revised OCC requirements</p> <p>23 on September 19, 2008 to you in any way?</p> <p>24 A. I can't recall.</p> <p>25 Q. You don't remember if you talked to</p>	<p>1 C. JONES</p> <p>2 Sharon Blake about it?</p> <p>3 MS. BLOOMER: Objection. Asked and</p> <p>4 answered.</p> <p>5 A. I don't remember.</p> <p>6 Sorry. Can you repeat that question?</p> <p>7 (Record read.)</p> <p>8 A. Sorry. Yes. No, after -- I can't</p> <p>9 remember which one came first, you know, but</p> <p>10 after -- I thought your question was how did I</p> <p>11 find out about it.</p> <p>12 Yes, at some point I asked her why is</p> <p>13 it zero.</p> <p>14 Q. And what did Sharon Blake say to you</p> <p>15 in response to that question?</p> <p>16 A. I can't recall the exact words.</p> <p>17 Q. Okay. Generally, what do you recall</p> <p>18 about what she told you?</p> <p>19 A. That the OCC had increased the</p> <p>20 requirement. I'm not sure if it was -- if that</p> <p>21 was the words, but something along those lines.</p> <p>22 Q. Other than the testimony you gave me a</p> <p>23 few minutes ago, do you recall anything else</p> <p>24 about the conversation you had with the OCC?</p> <p>25 MS. BLOOMER: Objection. Asked and</p>

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<p>1 C. JONES</p> <p>2 answered.</p> <p>3 A. Directly with the OCC?</p> <p>4 Q. Yes.</p> <p>5 A. No.</p> <p>6 Q. Do you remember anything, sir, about</p> <p>7 any conversations you had with anyone, whether</p> <p>8 directly at the OCC or otherwise, about the</p> <p>9 apparently revised requirements for the OCC's</p> <p>10 margin on September 19, 2008?</p> <p>11 A. No, I don't recall.</p> <p>12 Q. We're sitting here today on March --</p> <p>13 MS. BLOOMER: 4.</p> <p>14 Q. -- 4, 2010. As a general matter, sir,</p> <p>15 would you say that your recollection of the</p> <p>16 events is better today than it was on the 19th</p> <p>17 of September 2008, or do you think your</p> <p>18 recollection would have been better on September</p> <p>19 19, 2008 than it is today?</p> <p>20 MS. BLOOMER: Objection to the form.</p> <p>21 A. My recollection of what happened on</p> <p>22 September 19, 2008, versus now?</p> <p>23 Q. Yes.</p> <p>24 A. I would hope my recollection would be</p> <p>25 better on September 19.</p>	<p>1 C. JONES</p> <p>2 (Exhibit 679A, an e-mail chain, marked</p> <p>3 for identification, as of this date.)</p> <p>4 Q. Mr. Jones, I've handed you what I have</p> <p>5 marked as Exhibit 679A. Take a moment to review</p> <p>6 that, please, sir, and let me know when you're</p> <p>7 done.</p> <p>8 (Document review.)</p> <p>9 A. Okay.</p> <p>10 Q. Have you seen this document before,</p> <p>11 sir?</p> <p>12 A. I mean, since the 19th?</p> <p>13 Q. Yes.</p> <p>14 A. I don't -- I don't recall. Obviously</p> <p>15 I commented on it on the 19th.</p> <p>16 Q. Do you see on the first page of</p> <p>17 Exhibit 679A, sir, there's an e-mail from you at</p> <p>18 5:01 P.M. on Friday, the 19th?</p> <p>19 A. Uh-huh.</p> <p>20 Q. Excuse me. You're writing to a number</p> <p>21 of people here, including Michael Evans.</p> <p>22 Who is Michael Evans?</p> <p>23 A. I don't remember.</p> <p>24 Q. Do you remember who Christopher</p> <p>25 Anderson is?</p>
Page 36	Page 37
<p>1 C. JONES</p> <p>2 A. He's in our Margin Group.</p> <p>3 Q. Who's Michael Ross?</p> <p>4 A. Don't know.</p> <p>5 Q. Who's Michael Dubie?</p> <p>6 A. Don't know.</p> <p>7 Q. Do you know who Frank McGregor is?</p> <p>8 A. Frank is in the Options Group.</p> <p>9 MS. BLOOMER: Is it Frank or Michael?</p> <p>10 Oh, it is frank.</p> <p>11 THE WITNESS: It's Frank McGregor.</p> <p>12 Q. And Joe Lodato?</p> <p>13 A. Joe's in Equity Compliance.</p> <p>14 Q. Sir, you write to these individuals,</p> <p>15 and others, "We do not show any margin</p> <p>16 requirement. I spoke with the OCC who advised</p> <p>17 that we have a significant excess, but due to a</p> <p>18 policy decision, they have decided to lock up</p> <p>19 our account. I have asked for someone in the</p> <p>20 policy group to give me a call ASAP. Craig."</p> <p>21 Do you see that, sir?</p> <p>22 A. Yes.</p> <p>23 Q. Do you recall writing that e-mail,</p> <p>24 sir?</p> <p>25 A. I mean, vaguely.</p>	<p>1 C. JONES</p> <p>2 Q. When you wrote, "We do not show any</p> <p>3 margin requirement," sir, what did you mean by</p> <p>4 that?</p> <p>5 A. That's what I was wondering the same</p> <p>6 thing. I don't know for sure. I could -- it</p> <p>7 would be speculation. It doesn't make sense to</p> <p>8 me.</p> <p>9 Q. You then go on to say, "I spoke with</p> <p>10 the OCC, who advised we have a significant</p> <p>11 excess, but due to a policy decision, they have</p> <p>12 decided to lock up our account." Do you see</p> <p>13 that, sir?</p> <p>14 A. Yes.</p> <p>15 Q. Does that refresh your recollection</p> <p>16 about the conversation you had with the OCC?</p> <p>17 A. I can't recall if this is -- if</p> <p>18 there's one conversation or two, if this relates</p> <p>19 to the same one that I had had earlier or if</p> <p>20 this is a different discussion. I can't recall</p> <p>21 that.</p> <p>22 Q. You would agree, sir, that this does</p> <p>23 reflect that you had a conversation with the OCC</p> <p>24 in which the OCC advised that Lehman had a</p> <p>25 significant excess?</p>

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1 C. JONES
2 A. Yes.
3 Q. And do you have any reason to believe
4 that this relates to something other than LBI's
5 excess margin posted at the OCC?
6 MS. BLOOMER: Objection to form.
7 A. No.
8 Q. Do you agree that this e-mail reflects
9 that the OCC had advised not only that Lehman
10 had a significant excess margin at the OCC on
11 Friday, September 19th, but also that, due to a
12 policy decision, the OCC has decided to lock up
13 Lehman's account?
14 MS. BLOOMER: Objection to form.
15 A. Can you repeat that question?
16 (Record read.)
17 A. Yeah, I don't know.
18 Q. Why don't you know that, sir?
19 A. I don't recall the details of what --
20 that conversation.
21 Q. Right. My question is a little
22 different. I understand you don't recall the
23 details of many of these conversations, but I'm
24 asking you what this e-mail reflects, sir.
25 A. And as I said, I don't understand the

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1 C. JONES
2 anything other than what I just read to you.
3 MS. BLOOMER: Objection to form.
4 Q. Can you think of anything to which
5 "significant excess" could be a reference other
6 than excess margin posted by Lehman at the OCC?
7 A. No.
8 Q. And in the same vein, sir, can you
9 think of any explanation for the second sentence
10 of your e-mail other than that it reflects a
11 conversation that you had with the OCC, who
12 advised you that Lehman had a significant excess
13 margin posted at the OCC, but due to a policy
14 decision, had nevertheless decided to lock up
15 LBI's account?
16 MS. BLOOMER: Objection to form.
17 Asked and answered.
18 A. I may have asked and answered. I'm
19 going to ask you to give me the question again.
20 (Record read.)
21 MS. BLOOMER: Objection. I don't know
22 how that question is any different.
23 A. I don't know what -- generally, no, I
24 don't know what it means by locking up our
25 account.

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1 C. JONES
2 first sentence, and the rest of it, I don't know
3 what -- what the reference was.
4 Q. Can you think of any meaning, sir,
5 that you could ascribe to the second sentence
6 other than the OCC has advised you on September
7 19, 2008 that Lehman has a significant excess
8 margin posted at the OCC, but due to a policy
9 decision, the OCC has decided to lock up that
10 account?
11 MS. BLOOMER: Objection to form. The
12 e-mail does not say that the OCC advised him
13 of anything on September 19.
14 Mischaracterizes the document.
15 A. Can you repeat that last question?
16 (Record read.)
17 A. It doesn't say significant excess
18 margin. It just says significant excess. I
19 could see why you might make the assumption it's
20 a margin. But that's what I mean, I can't -- I
21 can't say for sure what the meaning is.
22 Q. Sure. I'm not asking you for sure
23 what the meaning is, sir. I understand that you
24 don't remember writing this e-mail other than
25 vaguely. I'm asking you whether it could mean

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1 C. JONES
2 Q. At the risk of extending this
3 deposition unnecessarily, that wasn't my
4 question. My question wasn't what does it mean
5 to say the OCC is locking up your account. Did
6 you read -- did you hear that as my question,
7 sir?
8 A. Not that you asked about the second
9 sentence, and I'm trying to interpret the --
10 what I was trying to write in that sentence.
11 MR. OXFORD: Can you read back my
12 question that I have asked a few times,
13 please?
14 (Record read.)
15 MS. BLOOMER: Objection to form.
16 Asked and answered.
17 A. No.
18 Q. The third sentence of your e-mail
19 says, "I have asked for someone in the policy
20 group to give me a call, ASAP." Do you see
21 that?
22 A. Yes.
23 Q. Is that reference, sir, to someone in
24 the policy group of OCC or at Lehman?
25 A. I assume it was somebody at the OCC.

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<p>1 C. JONES</p> <p>2 Q. Do you recall whether or not someone</p> <p>3 in the policy group at the OCC did call you?</p> <p>4 A. I can't recall for sure.</p> <p>5 Q. You think they might have, but you</p> <p>6 just don't recall?</p> <p>7 A. Very possibly.</p> <p>8 Q. If you did have a conversation with</p> <p>9 someone in the policy group at the OCC, would</p> <p>10 you have taken notes on that call?</p> <p>11 MS. BLOOMER: Objection. Calls for</p> <p>12 speculation.</p> <p>13 A. I don't know.</p> <p>14 Q. Was it your practice to take notes of</p> <p>15 calls with the OCC, sir?</p> <p>16 A. Not necessarily. Sometimes yes,</p> <p>17 sometimes no.</p> <p>18 MR. OXFORD: Okay. We'll take a</p> <p>19 five-minute break.</p> <p>20 (Recess; Time Noted. 3:09 P.M.)</p> <p>21 (Time Noted: 3:28 P.M.)</p> <p>22 BY MR. OXFORD:</p> <p>23 Q. Mr. Jones, can you have your</p> <p>24 declaration in front of you and turn to</p> <p>25 paragraph 9, please.</p>	<p>1 C. JONES</p> <p>2 A. Okay.</p> <p>3 Q. Your report in paragraph 9 of your</p> <p>4 declaration that you spoke to the OCC, who</p> <p>5 confirmed that LBI would not be permitted to</p> <p>6 withdraw any of the margin excess that had been</p> <p>7 reported to LBI on the morning of September</p> <p>8 19th, 2008, correct?</p> <p>9 A. That's right. Yes.</p> <p>10 Q. You then go on to say that you were</p> <p>11 advised that the OCC had full authority to take</p> <p>12 this measure and were referred to the relevant</p> <p>13 OCC rules. Do you see that?</p> <p>14 A. Yes.</p> <p>15 Q. Did you actually go and look at those</p> <p>16 OCC rules, sir?</p> <p>17 A. No.</p> <p>18 Q. Did you have any further conversations</p> <p>19 with anyone on Friday, the 19th, that you recall</p> <p>20 about the Lehman margin at the OCC?</p> <p>21 A. Other than Sharon?</p> <p>22 Q. Other than Sharon.</p> <p>23 A. I don't recall except for what you</p> <p>24 have in this e-mail.</p> <p>25 Q. And by "this e-mail," do you mean --</p>
Page 44	Page 45
<p>1 C. JONES</p> <p>2 A. 679A.</p> <p>3 Q. Do you remember any conversations you</p> <p>4 had with anyone about the topic of Lehman's</p> <p>5 margin at the OCC on the Saturday, the 20th of</p> <p>6 September, 2008?</p> <p>7 A. I don't recall any specific</p> <p>8 conversation. I would have expected I would</p> <p>9 have, but I don't recall any conversations.</p> <p>10 Q. Why would you expected that you would</p> <p>11 have?</p> <p>12 A. We were in that weekend, you know,</p> <p>13 trying to figure out where all of our, you know,</p> <p>14 liquidity and everything was, so that obviously</p> <p>15 would have been sort of a sore thumb around, you</p> <p>16 know, something that you would expect that's not</p> <p>17 available.</p> <p>18 Q. Did you have any conversations with</p> <p>19 anyone, sir, on Sunday, the 21st of September,</p> <p>20 2008, about LBI's margin at the OCC?</p> <p>21 A. Again, it would be the same answer as</p> <p>22 Saturday. It would be -- I don't remember</p> <p>23 exactly the details of what was going on, but I</p> <p>24 would imagine that that would have been</p> <p>25 discussed at some point or someplace.</p>	<p>1 C. JONES</p> <p>2 Q. Do you recall asking anyone to check</p> <p>3 the OCC's requirements over the weekend of the</p> <p>4 20th and 21st of September, 2008?</p> <p>5 A. Yes. Yes. I'm sure we would have.</p> <p>6 Q. What do you recall about that, sir?</p> <p>7 A. Again, similar to before. We were</p> <p>8 trying to figure out where the potential -- what</p> <p>9 our overall liquidity position is, so I would</p> <p>10 have said can you give me what, you know, where</p> <p>11 we have potential cash coming in, where do we</p> <p>12 have potential cash going out. So I had, you</p> <p>13 know, most people in that weekend kind of</p> <p>14 sourcing wherever we have more normal cash flows</p> <p>15 to figure out what's happening. So it would</p> <p>16 have been in that context.</p> <p>17 Q. For what purpose were you trying to</p> <p>18 identify liquidity over the weekend for the 20th</p> <p>19 through 21st, sir?</p> <p>20 A. It basically was part of the role.</p> <p>21 You know, you would need to kind of understand</p> <p>22 what was happening, you know, where your money</p> <p>23 was going, where it was coming in. So we didn't</p> <p>24 know what was -- you have to understand it was a</p> <p>25 big confusion. So --</p>

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<p>1 C. JONES</p> <p>2 Q. I've heard that.</p> <p>3 A. I'm sure.</p> <p>4 Ultimately, the idea was just to be</p> <p>5 prepared for anything. We didn't know what was</p> <p>6 going on.</p> <p>7 Q. Were you trying to identify liquidity</p> <p>8 so that assets could be transferred to Barclays,</p> <p>9 sir?</p> <p>10 A. No.</p> <p>11 Q. At whose direction were you searching</p> <p>12 for these sources of liquidity?</p> <p>13 MS. BLOOMER: Objection to form.</p> <p>14 A. It's just, again, part of our role,</p> <p>15 just our job to understand where we have cash</p> <p>16 going in and cash going out. So there was no</p> <p>17 specific direction, at least not that I recall,</p> <p>18 but I mean, I would have been -- I do that every</p> <p>19 day.</p> <p>20 Q. Do you recall any conversations with</p> <p>21 Mr. Ullman over the weekend of the 20th and 21st</p> <p>22 of September, sir, about the transfer of assets</p> <p>23 to Barclays?</p> <p>24 A. Mr. Ullman?</p> <p>25 Q. Yes. I thought you said you reported</p>	<p>1 C. JONES</p> <p>2 to Mr. Ullman.</p> <p>3 A. No, Dan Fleming.</p> <p>4 Q. Oh, sorry.</p> <p>5 Same question with respect to Mr.</p> <p>6 Fleming.</p> <p>7 A. Okay. Sorry. Can you repeat that</p> <p>8 question?</p> <p>9 (Record read.)</p> <p>10 A. Yes, no.</p> <p>11 Q. Do you recall any conversations with</p> <p>12 anyone, sir, prior to September 22, 2008</p> <p>13 regarding the transfer of assets to Barclays?</p> <p>14 A. No.</p> <p>15 Q. Do you recall receiving an answer to a</p> <p>16 request that a member of your staff check the</p> <p>17 OCC's systems to determine whether or not there</p> <p>18 was any excess margin in LBI's account at the</p> <p>19 OCC?</p> <p>20 MS. BLOOMER: Objection to form.</p> <p>21 A. Can you say that again?</p> <p>22 (Record read.)</p> <p>23 Q. And my question, sir, is directed to</p> <p>24 the weekend of the 20th and 21st of September,</p> <p>25 2008.</p>
Page 48	Page 49
<p>1 C. JONES</p> <p>2 A. Sorry, answer to my request for that?</p> <p>3 Do I remember getting an answer?</p> <p>4 Q. Yes.</p> <p>5 MS. BLOOMER: Objection to form.</p> <p>6 A. I don't recall specifically. I assume</p> <p>7 I would have. Someone would have told me.</p> <p>8 Q. I'm handing you, sir, what I've marked</p> <p>9 previously in this depositions as Exhibit 634B.</p> <p>10 I'd like you to take a moment and review that</p> <p>11 document, and when you're done, tell me whether</p> <p>12 you've seen it before.</p> <p>13 MS. BLOOMER: I'm going to object to</p> <p>14 the form of that question about a request</p> <p>15 because I don't know where -- your question</p> <p>16 about a request assumed a fact that was not</p> <p>17 in evidence, and I want to make a formal</p> <p>18 objection to that statement.</p> <p>19 MR. OXFORD: I think that's your</p> <p>20 second formal objection to that. That's</p> <p>21 your first speaking objection, but it's your</p> <p>22 second objection.</p> <p>23 MS. BLOOMER: I don't think I objected</p> <p>24 to an assumed fact in evidence before, so I</p> <p>25 wanted to make that clear. Thank you.</p>	<p>1 C. JONES</p> <p>2 A. Okay.</p> <p>3 Q. Have you seen this document before,</p> <p>4 sir?</p> <p>5 A. I mean, I received an e-mail. I -- I</p> <p>6 don't recall it, but obviously I got it.</p> <p>7 Q. Did you review this document in</p> <p>8 preparation for your deposition today, sir?</p> <p>9 A. I, to be honest with you, don't</p> <p>10 recall.</p> <p>11 Q. Does this document refresh your</p> <p>12 recollection that you asked Ms. Blake over the</p> <p>13 weekend of the 20th and 21st to check the OCC's</p> <p>14 current requirements for margin in LBI's</p> <p>15 accounts at the OCC?</p> <p>16 MS. BLOOMER: Objection to the form.</p> <p>17 Assumes facts not in evidence.</p> <p>18 A. I mean, it's to Dan and copied to me.</p> <p>19 It's indicating maybe one of us asked her for</p> <p>20 it. So it doesn't -- did that answer your</p> <p>21 question? What was the question again?</p> <p>22 Q. My question is does it refresh your</p> <p>23 recollection as to whether or not you asked Ms.</p> <p>24 Blake to report on the current requirements?</p> <p>25 A. Sorry.</p>

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C. JONES

Q. Does it indicate to you that either you or Mr. Fleming asked Ms. Blake to check current requirements for the OCC margin requirements in Lehman's account over the weekend of the 20th through 21st of September?

MS. BLOOMER: Objection to form and calls for speculation.

A. Yes, it indicated one of us asked.

Q. Can you tell me, please, what the e-mail indicates to you about the existence or otherwise of an excess in Lehman's accounts at the OCC?

MS. BLOOMER: Objection to form.

A. Can you repeat that question?

(Record read.)

A. It's the report that she pulled that indicates that their system is showing that we have an excess.

Q. And what is that excess, sir?

A. The system looks like it's saying it's 668 million.

Q. Do you agree, sir, that LBI had access to the OCC accounts on Sunday, the 21st of September, 2008?

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follow-up calls with anyone at the OCC after receiving this e-mail?

A. I don't know.

Q. Do you agree, sir, that as of the date of this e-mail, it appears that the OCC's records reflected that there was in excess of 668 million in Lehman's accounts at the OCC?

MS. BLOOMER: Objection to form.

A. Can you repeat that?

(Record read.)

A. As I said, it -- I can't speak for their records, but their system is showing that there's an excess.

Q. Mr. Jones, I've handed you what has been marked in prior depositions as Exhibit 635B. Could you review that, please, sir, and let me know when you're done.

A. Sure. Okay.

Q. Do you recall this e-mail, sir?

A. No.

Q. You see that two e-mails down the chain you write at 3:58 P.M. to Sharon Blake regarding the OCC requirement that they would normally charge in the morning for premiums, do

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MS. BLOOMER: Objection. Form.

A. Can you repeat that question?

(Record read.)

A. I probably wouldn't be counting on that, no.

Q. How was it, then, that Ms. Blake was able to obtain this information?

A. Well, again, this is a

system-generated. I'm assuming, you know, this is, again, sort of me making assumptions, that she had gotten this of their Website, and this is from their \$668 million excess that their system would be showing.

So if that's real, I mean, that's sort of a good indication for us, but, you know, is that the final? Obviously, you know, as we saw Friday, it wasn't. So we would look at it and say, okay, there's potential excess, but we don't know if that's actually available.

Q. Did you have any follow-up calls with anyone at the OCC after you received this e-mail, sir?

A. I don't recall.

Q. Do you know if Mr. Fleming had any

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you see that?

A. Yes.

Q. What do you mean when you ask Ms. Blake to send the OCC requirement that they would normally charge in the morning for premiums?

A. There's two portions to, you know, the daily change in the OCC requirement or -- basically, there's the daily margin requirement and then what's called a pay collect, and the premiums go through that pay collect calculation. So you may have an excess in your margin, but then you'll have a shortfall in your premiums or vice-versa. It can go either way.

So I was just asking her -- what she just sends along, if I remember right, is just the excess deficit of the margin not taking into account the actual pay collect.

Q. And under what circumstances would -- well, withdrawn. Can you explain what you mean by "pay collect"?

A. Depending upon which way the premiums are going, you know, we're either paying premiums or we're receiving premiums, you know,

14 (Pages 50 to 53)

1
2 UNITED STATES BANKRUPTCY COURT
3 SOUTHERN DISTRICT OF NEW YORK

4 -----x

5 In Re:

6 Chapter 11

7 LEHMAN BROTHERS Case No. 08-13555(JMP)
8 HOLDINGS, INC., et al, (Jointly Administered)
9 Debtors.

10 -----x

11
12 DEPOSITION OF ALAN KAPLAN

13 New York, New York

14 March 1, 2010

15
16 Reported by:

17 MARY F. BOWMAN, RPR, CRR

18 JOB NO. 28619
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Page 7

KAPLAN
ALAN KAPLAN,
called as a witness by the parties,
having been duly sworn, testified as follows:

EXAMINATION BY
MS. DEL MEDICO:

Q. Good morning, Mr. Kaplan. My name is Jennifer Del Medico. I represent LBHI, the debtors in this case.

Mr. Kaplan, who is your employer?

A. I work for Barclays Capital.

Q. What is your position at Barclays Capital?

A. Deputy general counsel, Americas.

Q. How long have you held that position?

A. About nine and a half years.

Q. In September of 2008, you held that position, correct?

A. That's correct.

Q. What are your general responsibilities in that position?

A. My -- I have a broad background and so my responsibilities change from time to time depending on the needs. Among the areas which I cover are regulatory matters. I help supervise

KAPLAN
our litigation. I tend to get involved with workouts and restructurings and then as there are particular projects or transactions which require my assistance, I will get involved with those as well. I also manage a number of lawyers.

Q. Did you have any responsibilities in September 2008 related to the sale transaction between Lehman and Barclays?

A. I was involved with the sales transaction. I was looking at a number of issues as they would arise in terms of responsibilities. There were a number of people who were, in a sense, thrown at the transaction and people were handling different matters as they saw fit as matters arose.

I would say the two areas where I had primary responsibility or significant responsibility would be the, in the Fed replacement repo and then -- I am trying to decide if there was a second primary area. Otherwise, it was more general assistance with the transaction.

Q. To whom did you report with respect to

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Page 9

KAPLAN
your responsibilities with the Fed replacement repo?

A. Well, both with respect to that matter and more generally, I reported to Jonathan Hughes, global general counsel of Barclays Capital.

Q. Was there anyone else?

A. I guess "reporting" is a difficult term for me. I mean, on the Fed replacement repo transaction, on the business side, the person probably needing our efforts there was Gerard Larocca. I'm not sure whether I reported to him or not.

Q. With respect to the Fed replacement repo, did you have a team working under you who reported up to you?

MR. SHAW: Do you mean a team on the legal side?

Q. Yes, a team of lawyers.

A. I wouldn't describe it that way. I think -- some of that we were putting documentation in place for potential triparty repo. One of my lawyers, Andy Georgalas, was assisting with that. Otherwise, I don't think

KAPLAN
there were lawyers who were significantly involved with the replacement repo.

Q. And on the business side, were you interacting with business people at Barclays with respect to the Fed replacement repo?

A. Yes.

Q. Who were those individuals?

A. Gerard Larocca, David Petrie, and to some extent with some of our operations team, I believe it was John Rodefald, possibly John Haley.

Q. I am going to hand you, not mark it, just a calendar from September of 2008. Using this calendar, can you tell me when you first became involved with working on the Fed replacement repo, approximately?

A. I think I first got involved with an earlier proposed repo transaction between Barclays and Lehman and I believe that was on Saturday the 13th and this was at the time when people were considering the transaction of actually acquiring all of Lehman and so I was asked to assist with putting repo documentation or triparty repo documentation in place.

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<p>1 KAPLAN</p> <p>2 But that wasn't specifically for the</p> <p>3 Fed. But it turned out that the same</p> <p>4 documentation was also used for the Fed repo and</p> <p>5 I think the Fed replacement repo involvement</p> <p>6 probably started on either the 16th or early on</p> <p>7 the 17th.</p> <p>8 Q. Describe to me what happened on</p> <p>9 Saturday the 13th when you began working on an</p> <p>10 early proposed repo and that repo did not go</p> <p>11 through, correct?</p> <p>12 A. Right, that was intended to be part of</p> <p>13 the financing for the original transaction. I</p> <p>14 believe I had a call from -- call or e-mail from</p> <p>15 Jonathan Hughes.</p> <p>16 MR. SHAW: Alan, let me caution you,</p> <p>17 again, because you're a lawyer, I want to be</p> <p>18 certain that none of what you are answering</p> <p>19 involves matters that you know only in a</p> <p>20 privileged context.</p> <p>21 THE WITNESS: Can I consult with you</p> <p>22 for just a second?</p> <p>23 MR. SHAW: Sure, sure.</p> <p>24 (Discussion held off the record)</p> <p>25 Q. Describe to me what happened on</p>	<p>1 KAPLAN</p> <p>2 Saturday the 13th when you began working on an</p> <p>3 early proposed repo?</p> <p>4 A. I was home and received either an</p> <p>5 e-mail or a telephone call and I believe from</p> <p>6 Jonathan Hughes asking me to come to the office</p> <p>7 and work with Gerard Larocca, I think on a</p> <p>8 financing transaction or repo transaction.</p> <p>9 I remember being at the office that</p> <p>10 day, that weekend. I also had, I believe,</p> <p>11 conversations with and maybe even met with a</p> <p>12 couple of lawyers at Lehman to discuss the</p> <p>13 documentation and my recollection now is Locke</p> <p>14 McMurray and Scott Lechner. I don't recall when</p> <p>15 those meetings were, on Saturday or Sunday.</p> <p>16 Q. When you refer to the documentation,</p> <p>17 what are you referring to specifically?</p> <p>18 A. One was confirming that we had an</p> <p>19 appropriate master repurchase agreement in place</p> <p>20 which between Lehman Brothers Inc. and Barclays</p> <p>21 Capital Inc. and at that time, I think there was</p> <p>22 also some question as to which parties might be</p> <p>23 the relevant parties and some also are, I think,</p> <p>24 confirming that we had documentation in place</p> <p>25 between Barclays Bank PLC and Lehman Brothers</p>
Page 12	Page 13
<p>1 KAPLAN</p> <p>2 Inc. and we were also looking to insure that we</p> <p>3 had, if needed, appropriate triparty custody</p> <p>4 arrangements in place with both BoNY and JP</p> <p>5 Morgan.</p> <p>6 Q. What happened to the documentation</p> <p>7 with respect to this repo; did you use it when</p> <p>8 you went into the stage that you were working at</p> <p>9 the Fed replacement repo or did it just get</p> <p>10 trashed?</p> <p>11 A. Well, the master repurchase agreement</p> <p>12 between Barclays Capital Inc. and Lehman</p> <p>13 Brothers Inc. was already in place and that was</p> <p>14 used. And there was a new triparty agreement</p> <p>15 between Barclays Capital Inc., Lehman Brothers</p> <p>16 Inc. and JP Morgan which we signed and put in</p> <p>17 place and thought we might use. My</p> <p>18 understanding is ultimately it was not</p> <p>19 necessary.</p> <p>20 Q. I am going to hand you a document,</p> <p>21 Mr. Kaplan, that has already been marked as</p> <p>22 Exhibit 117. Take a look at that. Take a look</p> <p>23 at this document and tell me if you recognize</p> <p>24 it.</p> <p>25 A. This appears to be the master</p>	<p>1 KAPLAN</p> <p>2 repurchase agreement that was in place between</p> <p>3 LBI and BCI.</p> <p>4 Q. Let me hand you a document that has</p> <p>5 already been marked 579B. If you could take a</p> <p>6 look at that and tell me if you can identify it.</p> <p>7 A. This is the declaration which I</p> <p>8 provided on January 26, 2010.</p> <p>9 Q. And in paragraph 3 of your</p> <p>10 declaration, you state that, "The repo</p> <p>11 transaction that Barclays entered into with</p> <p>12 Lehman Brothers at the behest of the Fed</p> <p>13 Reserve, the Fed replacement repo, was</p> <p>14 transacted using the parties' standing master</p> <p>15 purchase agreement dated as of July 23, 1998</p> <p>16 between LBI and Barclays Capital Inc." Correct?</p> <p>17 A. That's correct.</p> <p>18 Q. What do you mean by "at the behest of</p> <p>19 the Federal Reserve"?</p> <p>20 A. My understanding from nonprivileged</p> <p>21 documents that I have seen is that the Fed</p> <p>22 essentially required Barclays to enter into this</p> <p>23 transaction to replace the Fed financing</p> <p>24 provided to LBI.</p> <p>25 Q. And what nonprivileged documents are</p>

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<p>1 KAPLAN</p> <p>2 you referring to?</p> <p>3 A. I believe there were discussion of</p> <p>4 this, among other places, in the JP Morgan -- in</p> <p>5 the settlement documentation relating to the JP</p> <p>6 Morgan Chase settlement in December 2008.</p> <p>7 Q. And when you say at the behest of the</p> <p>8 Federal Reserve, are you referring to certain</p> <p>9 individual or individuals at the Federal</p> <p>10 Reserve?</p> <p>11 A. I don't think I have any nonprivileged</p> <p>12 information on that.</p> <p>13 Q. Did you have conversations with anyone</p> <p>14 at Lehman or its representatives at Weil about</p> <p>15 the Fed replacement repo?</p> <p>16 A. I had conversations with Scott Lechner</p> <p>17 and possibly Locke McMurray. I'm not sure if he</p> <p>18 was involved at that later stage.</p> <p>19 Q. Anyone at Weil Gotshal?</p> <p>20 A. I don't believe so.</p> <p>21 Q. And when did you have these</p> <p>22 conversations with Mr. Lechner and possibly</p> <p>23 Mr. McMurray?</p> <p>24 A. I believe on September 17.</p> <p>25 Q. And what did you discuss with</p>	<p>1 KAPLAN</p> <p>2 Mr. Lechner and possibly Mr. McMurray on the</p> <p>3 17th?</p> <p>4 A. I recall the conversation with</p> <p>5 Mr. Lechner, and in part, it was about using the</p> <p>6 master repurchase agreement to document the Fed</p> <p>7 replacement repo.</p> <p>8 So it was in part about the</p> <p>9 documentation and there was also some discussion</p> <p>10 about how the underlying securities would be</p> <p>11 treated if the transaction went forward, sale</p> <p>12 purchase transaction went forward. It was</p> <p>13 obvious that LBI would not be in a position to</p> <p>14 repurchase the securities and that we would have</p> <p>15 to deal with the securities as part of the</p> <p>16 purchase transaction.</p> <p>17 Q. And that conversation was on September</p> <p>18 17th?</p> <p>19 A. That's my recollection.</p> <p>20 Q. Was there any other discussion about</p> <p>21 how the underlying securities would be treated</p> <p>22 if the transaction went forward?</p> <p>23 MR. SHAW: You mean other than with</p> <p>24 Mr. Lechner?</p> <p>25 MS. DEL MEDICO: Right.</p>
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<p>1 KAPLAN</p> <p>2 A. No.</p> <p>3 MR. SHAW: And I assume you are</p> <p>4 excluding any privileged conversations?</p> <p>5 MS. DEL MEDICO: Right.</p> <p>6 MR. SHAW: He has answered no.</p> <p>7 A. I'm not sure I understand the</p> <p>8 question. No further discussions with</p> <p>9 Mr. Lechner about that or others at Lehman.</p> <p>10 Q. Or others at Lehman. OK. And when,</p> <p>11 just to be clear, when we discuss that there</p> <p>12 could possibly have been a conversation with</p> <p>13 Locke McMurray, would that have been during the</p> <p>14 same conversation with Mr. Lechner or would that</p> <p>15 have been a separate conversation?</p> <p>16 A. I don't recall whether it was more</p> <p>17 than one conversation. I remember that</p> <p>18 conversation with Mr. Lechner. I remember</p> <p>19 Mr. McMurray being involved with the repo</p> <p>20 documentation, certainly on the weekend before,</p> <p>21 and what I don't recall is whether in some of</p> <p>22 those conversations or just some back and forth</p> <p>23 on the repo documentation that may have involved</p> <p>24 Mr. McMurray.</p> <p>25 Q. What happened after September 17th</p>	<p>1 KAPLAN</p> <p>2 with respect to the Fed replacement repo?</p> <p>3 MR. SHAW: Objection to form, vague.</p> <p>4 Q. You can answer.</p> <p>5 A. I'm not sure what you're asking about.</p> <p>6 Q. Did you have other involvement in the</p> <p>7 Fed replacement repo after September 17th?</p> <p>8 A. Certainly anything prior to the</p> <p>9 closing I believe would have been privileged.</p> <p>10 Q. And I'm not asking for conversations</p> <p>11 or -- just involvement.</p> <p>12 MR. SHAW: Objection to form, vague.</p> <p>13 Q. Did you have any involvement with</p> <p>14 anyone else at Lehman or any other third parties</p> <p>15 with respect to the Fed repo after September</p> <p>16 17th?</p> <p>17 MR. SHAW: By third parties you're</p> <p>18 excluding outside counsel for Barclays, I</p> <p>19 take it?</p> <p>20 MS. DEL MEDICO: Yes.</p> <p>21 A. At least before the closing of the</p> <p>22 transaction, I do not believe so. I mean, it's</p> <p>23 possible -- one possibility is, and I don't</p> <p>24 recall, is, I don't remember whether the</p> <p>25 documents were actually signed on the 17th or</p>

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<p>1 KAPLAN</p> <p>2 there may have been a little more back and forth</p> <p>3 in terms of signing documents after that, but I</p> <p>4 just don't recall.</p> <p>5 Q. After your conversation with</p> <p>6 Mr. Lechner on the 17th, was there any more</p> <p>7 substance to that conversation besides the fact</p> <p>8 that the securities involving the repo would be</p> <p>9 part of the purchase transaction?</p> <p>10 MR. SHAW: Objection, asked and</p> <p>11 answered.</p> <p>12 A. Not that I recall.</p> <p>13 Q. OK. With regard to Exhibit 117 that</p> <p>14 you have in front of you, the master repurchase</p> <p>15 agreement that we discussed, do you know whether</p> <p>16 the Fed replacement repo was transacted under</p> <p>17 any other standing agreement between the</p> <p>18 parties?</p> <p>19 A. The only other possible agreement, I'm</p> <p>20 not sure if it is the Fed replacement repo, but</p> <p>21 there was 7 million (sic) dollars of cash which</p> <p>22 was provided initially by LBI to cover a</p> <p>23 shortfall in securities and -- is that a</p> <p>24 privilege issue?</p> <p>25 MR. SHAW: Let's step outside. And</p>	<p>1 KAPLAN</p> <p>2 that's 7 billion, not million.</p> <p>3 (Discussion held off the record)</p> <p>4 Q. Do you --</p> <p>5 A. I don't think I have any further</p> <p>6 nonprivileged information.</p> <p>7 Q. Was Bank of New York involved in the</p> <p>8 Fed replacement repo?</p> <p>9 MR. SHAW: Objection to form, vague.</p> <p>10 A. They were involved at least to some</p> <p>11 degree because some of the securities Barclays</p> <p>12 received were held or custodied at an account in</p> <p>13 Bank of New York.</p> <p>14 Q. Do you know whether they had any other</p> <p>15 involvement?</p> <p>16 A. There was a -- there was an employee</p> <p>17 of Bank of New York who attended the meeting, a</p> <p>18 meeting we had at the New York Fed on September</p> <p>19 17 primarily to assist, helping out with some of</p> <p>20 the arrangements for the transfer of securities.</p> <p>21 Q. Do you remember who that employee of</p> <p>22 BoNY was?</p> <p>23 A. First name is Art. I can't recall his</p> <p>24 last name.</p> <p>25 Q. Regarding the meeting on September</p>
Page 20	Page 21
<p>1 KAPLAN</p> <p>2 17th with the New York Fed, who was in</p> <p>3 attendance at that meeting?</p> <p>4 A. From the Barclays side, myself, Gerard</p> <p>5 Larocca, Dave Petrie, Elena Matrullo, Art from</p> <p>6 BoNY and from the Lehman side, Ian Lowitt, and</p> <p>7 there were a number of New York Fed staff people</p> <p>8 there and I don't recall any of the names.</p> <p>9 Q. What was discussed at that meeting?</p> <p>10 A. Primarily logistics for the transfer</p> <p>11 of securities from LBI to BCI.</p> <p>12 Q. And how were the securities to be</p> <p>13 transferred from LBI to BCI?</p> <p>14 A. There were a number of different</p> <p>15 technical discussions about how that would work</p> <p>16 and how it would work and partial transfers or</p> <p>17 one block transfer, you know, what kind of</p> <p>18 financing would be used to start a potential</p> <p>19 chain. There was some discussion of triparty</p> <p>20 repo as well.</p> <p>21 Q. What is your understanding of what</p> <p>22 actually happened --</p> <p>23 MR. SHAW: Objection.</p> <p>24 Q. -- regarding the logistics of the</p> <p>25 transfer?</p>	<p>1 KAPLAN</p> <p>2 MR. SHAW: Objection to form, vague.</p> <p>3 A. Can you be more specific?</p> <p>4 Q. Sure. You said that at the meeting</p> <p>5 with the Fed, different types of transfers were</p> <p>6 discussed. And what I am looking to find out is</p> <p>7 what transfers, what type of transfer was</p> <p>8 actually used to transfer the collateral from</p> <p>9 LBI to BCI?</p> <p>10 A. Yeah, I think my knowledge of that is</p> <p>11 based on privileged communications.</p> <p>12 Q. So you never had any conversations</p> <p>13 with anyone at the Fed or with Lehman about the</p> <p>14 actual type of transfer that was taking place?</p> <p>15 A. I don't believe so.</p> <p>16 Q. Did you have any, besides the meeting</p> <p>17 on September 17 that we just spoke about, did</p> <p>18 you have any other conversations with anyone at</p> <p>19 the Fed about the Fed replacement repo?</p> <p>20 A. I don't recall. It's possible --</p> <p>21 there were no further meetings. There may have</p> <p>22 been a follow-up conference call, I just don't</p> <p>23 recall.</p> <p>24 Q. After this meeting on September 17th,</p> <p>25 did you personally do anything further with</p>

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regard to the Fed replacement repo?

A. Can you be more specific?

Q. Sure, did you, after this meeting on September 17th, did you do any further work on the Fed replacement repo, including conversations with how the repo would work or facilitating the repo, anything at all regarding --

A. I think its privileged.

MR. SHAW: You can answer yes or no.

But if it involves a legal work you did for Barclays or discussions with Barclays personnel, I think that would be privileged.

A. The answer is yes, but it would be privileged.

Q. Can you turn to your declaration, 579B. In paragraph 4 of your declaration, you state that on February -- I am sorry, "On Friday, September 19th, 2008, the Securities Investor Protection Corporation sought and obtained an order putting Lehman Brothers Inc. under the control of a trustee," and you go on to say, "This triggered contractual termination rights for Barclays under eight master

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agreements between various Barclays entities and LBI and launched a routine process within Barclays that resulted in Barclays' serving on LBI notices of termination or default under each of those agreements.

"Among the agreements with respect to which a notice of early termination was served was the master repo agreement."

Do you know what part of the master repurchase agreement triggered contractual termination rights for Barclays? And you have it, so.

A. In one of the events of default, under section 11 is an act of insolvency.

Q. And what is the routine process under which Barclays exercises its rights under section 11?

MR. SHAW: Objection to form.

A. I'll answer, I mean, it is not just with respect to section 11 of the MRA, but there are other master agreements, such as ISDAs, and when we have a defaulting counterparty, one of the things we will do typically in advance is determine what agreements we have in place with

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them and what notices are required to be served and where and prepare the forms of notice so that we are ready to go out with them when the actual event happens.

Q. Who at Barclays determines whether there is a triggering event?

A. Depending on the circumstances, it may be a number of people involved, but no one would send out a notice of default or termination without the legal department preparing those notices and saying it was appropriate to send them out.

Q. Help me understand, how does that information get to the legal department? Is there a department at Barclays that is monitoring potential issues that would trigger termination rights?

MR. SHAW: Objection to form.

Q. Do you understand?

A. I understand the question. I continue to have questions about privilege.

MR. SHAW: Let's consult.

(Discussion held off the record.)

A. Generally speaking, at Barclays, there

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would be a number of people who were concerned with these events and trying to coordinate their actions including in our credit department, but legal as well, and certainly in the case of a bankruptcy filing, it would often be the case that legal might be the first to know or be able to verify that it had occurred or in any kind of insolvency proceeding.

Q. So there is no -- it can vary? It is not like the credit department is on the lookout for a triggering event and send that information to legal?

A. They might be. They probably would be. But it is really a matter of coordination and if in some kind of proceeding, there is a good chance it would be legal which would be the first to either know or verify that.

Q. Then what would happen next?

A. Again, typically there would be a certain amount of coordination between legal, credit and potentially the relevant front office desks that were transacting with a counterparty, and the process will vary somewhat depending on whether there was time to prepare ahead of time

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<p>1 KAPLAN</p> <p>2 or whether there was notice of the event and</p> <p>3 there is a much more expedited reaction to it.</p> <p>4 Q. Who at Barclays decides whether</p> <p>5 Barclays should exercise its rights under 11 of</p> <p>6 the master repurchase agreement?</p> <p>7 A. Again, it may depend on the particular</p> <p>8 circumstances.</p> <p>9 Q. So is there a routine process that</p> <p>10 Barclays follows or does it vary? Depending</p> <p>11 upon --</p> <p>12 MR. SHAW: Objection to form.</p> <p>13 A. There is a fairly routine process in</p> <p>14 terms of getting our arms around what master</p> <p>15 agreements there are, determining whether or not</p> <p>16 there are transactions standing under them,</p> <p>17 preparing notices, and coordinating with front</p> <p>18 office and credit.</p> <p>19 Q. Understanding that it may depend on</p> <p>20 the particular circumstances of an event as to</p> <p>21 who ultimately decides whether Barclays should</p> <p>22 exercise its rights -- strike that.</p> <p>23 I understand that different people in</p> <p>24 different departments may decide whether</p> <p>25 Barclays should exercise its rights under 11A,</p>	<p>1 KAPLAN</p> <p>2 correct?</p> <p>3 MR. SHAW: Objection to the form,</p> <p>4 vague as to circumstances. Are you talking</p> <p>5 about in the event of an act of insolvency?</p> <p>6 Q. In the event of an act of insolvency.</p> <p>7 MR. SHAW: I object. It</p> <p>8 mischaracterizes section 11A which states</p> <p>9 that the option shall be deemed to have been</p> <p>10 exercised immediately upon the occurrence of</p> <p>11 an act of insolvency.</p> <p>12 Q. Is there an individual at Barclays who</p> <p>13 determines whether or not rights should be</p> <p>14 exercised under 11A?</p> <p>15 A. There is not necessarily one</p> <p>16 individual, no.</p> <p>17 Q. What groups of individuals' input go</p> <p>18 into making this decision?</p> <p>19 A. As I mentioned earlier, credit</p> <p>20 department, legal department, and depending on a</p> <p>21 counterparty, somebody in the front office.</p> <p>22 There could be more than one.</p> <p>23 Q. Are there any other departments or is</p> <p>24 that it?</p> <p>25 A. Those come to mind.</p>
Page 28	Page 29
<p>1 KAPLAN</p> <p>2 Q. Is there anyone at Barclays who needs</p> <p>3 to sign off on a notice of termination going</p> <p>4 out?</p> <p>5 MR. SHAW: Objection to form.</p> <p>6 A. I don't think there is any one</p> <p>7 individual, but clearly legal has to be on board</p> <p>8 with it.</p> <p>9 Q. Could you -- I know you just described</p> <p>10 to me the routine process that -- within</p> <p>11 Barclays that results in Barclays serving</p> <p>12 notices of termination in general, but with</p> <p>13 respect to the notice of early termination that</p> <p>14 was served regarding the master repurchase</p> <p>15 agreement, what specific steps were taken within</p> <p>16 Barclays?</p> <p>17 A. We, prior to the 19th, sort of an</p> <p>18 inventory was put together of what master</p> <p>19 agreements various Barclays entities had with,</p> <p>20 in this case, Lehman Brothers Inc. There were</p> <p>21 people in the legal department who prepared the</p> <p>22 forms of notices that were required in</p> <p>23 connection with master agreements. And then</p> <p>24 would arrange for them to be signed and sent</p> <p>25 out.</p>	<p>1 KAPLAN</p> <p>2 Q. Who at Barclays put the inventory</p> <p>3 together?</p> <p>4 A. I believe two people who were involved</p> <p>5 with that were Jim Brown, James Brown, a lawyer</p> <p>6 in the legal department and Chen Sethi, an</p> <p>7 analyst working in the legal department, and</p> <p>8 there may have been others working with them.</p> <p>9 Q. Who arranged -- who prepared the forms</p> <p>10 of notices that were required in connection with</p> <p>11 the master agreement?</p> <p>12 A. I believe they did or others working</p> <p>13 with them.</p> <p>14 Q. I am going to give to you what has</p> <p>15 already been marked Exhibit 27. Could you take</p> <p>16 a look at this document and tell me if you</p> <p>17 recognize it?</p> <p>18 A. Yes, I recognize it.</p> <p>19 Q. What is this document?</p> <p>20 A. This is the notice of termination that</p> <p>21 was sent out with respect to the master</p> <p>22 repurchase agreement between BCI and LBI.</p> <p>23 Q. Is this the agreement that you refer</p> <p>24 to in paragraph 4 of your declaration?</p> <p>25 MR. SHAW: Do you mean is this the</p>

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<p>1 KAPLAN 2 notice he referred to? 3 MS. DEL MEDICO: I am sorry, the 4 notice. 5 Q. I am sorry, the notice? 6 A. Yes, it is. 7 Q. Were you a party to any discussions 8 with Lehman or its representatives at Weil 9 Gotshal about what, if anything, the master 10 repurchase agreement or the sale transaction 11 document said that addressed the possibility of 12 a termination over the repo? 13 A. No, other than the conversation 14 mentioned earlier with Scott Lechner that it was 15 clear that LBI would not be in a position to 16 repurchase the securities. 17 Q. Did the topic of the termination -- a 18 possible termination specifically come up? 19 A. Just in the context of if the deal 20 went forward, that the normal termination 21 arrangements didn't make sense. 22 Q. Why wouldn't the normal termination 23 arrangements make sense? 24 A. Do you want to rephrase that a little. 25 I'm not sure if there was a discussion or maybe</p>	<p>1 KAPLAN 2 just a brief acknowledgment, but under the 3 master repurchase agreement, there are 4 provisions for either selling securities or 5 valuing them and I believe we both understood or 6 maybe acknowledged that there was no point in 7 going through that kind of exercise in the 8 context of the purchase transaction. 9 Q. Why? 10 A. My understanding, again, I'm not sure 11 the conversation was this specific, but you had 12 thousands of securities, a number of which might 13 be difficult to value, and essentially, the 14 termination process is a process where one party 15 is in default and the other party is making 16 various judgments. It didn't seem to be 17 necessary in the context of a consensual 18 purchase agreement. 19 Q. Did you discuss valuation any further 20 with Mr. Lechner? 21 MR. SHAW: Objection to form. 22 A. I don't believe so. 23 Q. To your knowledge, was anybody on 24 Barclays' side of the table, Barclays or its 25 representatives involved in discussions with</p>
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<p>1 KAPLAN 2 Lehman or its representatives about what, if 3 anything, the master repurchase agreement or the 4 sale transaction documents said that addressed 5 the possibility of a termination of the repo? 6 MR. SHAW: I'll again remind you not 7 to disclose any privileged communications. 8 Q. I'm just asking if you know of any 9 communications between Barclays or its lawyers 10 with Lehman and its lawyers? 11 MR. SHAW: If you have nonprivileged 12 knowledge of any such communications, you 13 may answer. 14 A. Based on what's in the -- based on the 15 provisions in the clarification letter, there 16 must have been communications. 17 Q. Who is Michael Montgomery? 18 A. Michael Montgomery is a Barclays 19 employee who has been with Barclays about ten 20 years. I'm not sure what his specific 21 involvement was in this transaction. 22 Q. If you turn on Exhibit 27 that I gave 23 you, the notice -- 27. Do you see that Michael 24 Montgomery signed this notice of termination and 25 you're cc'd on the bottom?</p>	<p>1 KAPLAN 2 A. Yes, one of Mike's roles is he is an 3 officer and director of Barclays Capital Inc. 4 Q. Do you know whether he routinely signs 5 notices of termination? 6 A. I'm not sure that he routinely signs 7 them, but as a Barclays Capital Inc. officer and 8 director, he may sign documents from time to 9 time. 10 Q. Do you know why you were cc'd on this 11 notice of termination? 12 MR. SHAW: Objection to form, 13 foundation. 14 A. I'm cc'd on most if not all of the 15 notices of termination which get sent out in the 16 U.S. 17 Q. What do you do with these notices that 18 you're cc'd on as a matter of course? 19 A. Take the e-mail and file it in a 20 relevant PST folder. 21 Q. With respect to this notice of 22 termination, do you recall receiving this 23 document on or around September 19? 24 A. I recall after September 19th, 25 probably on the 20th, either learning of a</p>

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notice of termination or possibly receiving this or noticing that I had received it.

Q. What did you -- did you read the document then on September 20th for the first time?

A. I don't recall if I read the document, but I understood that a notice of termination had been sent with respect to the master repurchase agreement.

Q. If you didn't read it, how did you understand that it had been sent?

A. I may have read it, I don't recall.

Q. Did it come to you via e-mail or did someone hand it to you, do you recall?

A. I believe I would have received a privileged e-mail.

Q. If -- so you didn't receive this via e-mail like you did in the ordinary course with other notices of termination that you would get and file in the PST files?

MR. SHAW: Objection, mischaracterizes --

A. No, I didn't say that. I don't recall how I received it. I probably received it by

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e-mail. Whether I read it or not, I don't recall.

There was a lot going on at the time and whether I noticed it right away or after the fact and whether I immediately moved it into a PST folder, I just can't recall in this case.

Q. Did someone at Barclays bring it to your attention?

MR. SHAW: Again, if this, if the answer is a question involved with privileged communication, please don't divulge the details of that.

A. It would have involved a privileged communication.

MS. DEL MEDICO: Well, Jonathan, I think I am allowed to inquire into the notice of termination and whether or not it was an error. It is information that you have affirmatively put at issue in Mr. Kaplan's declaration.

MR. SHAW: I understand your position and our position is he is not going to divulge any privileged communications.

MS. DEL MEDICO: Well, we will keep

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moving and make our record.

Q. What did you do after you -- did you eventually review this document?

A. I don't recall if I reviewed the document because I know what the contents would have been. But I became aware that we had provided this termination notice which clearly should not have been sent.

Q. Back to your declaration, you state that -- in paragraph 4 of your declaration, you state that the notice of termination that was served pursuant to the master purchase agreement should not have been sent. Then you refer to this notice as an error, correct?

A. Correct.

Q. Do you recall when you first realized that the notice should not have been sent?

MR. SHAW: Objection, asked and answered.

A. I believe on the 20th when I learned that the notice had been sent, as soon as I focused on the fact that it was one of the -- among the other notices, one for the master repurchase agreement, that's when I recognized

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there was a mistake.

Q. And what did you do after you recognized that?

MR. SHAW: And to the extent it would call for you to divulge any privileged communications, I instruct you not to answer.

A. Yeah, it would involve privileged communications.

Q. Did you speak to anyone at Lehman or its representatives at Weil Gotshal about the notice of termination?

A. I don't believe so, no.

Q. Do you know whether anyone on Barclays -- anyone at Barclays or any of Barclays' representatives spoke with anyone at Weil about the document?

MR. SHAW: Objection; orally, communicated otherwise? What are you asking?

Q. If someone at Barclays or Barclays representatives communicated with anyone at Weil Gotshal or Lehman Brothers about the document?

A. Yes, based on the language in the

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clarification letter regarding this notice of termination, I assume they did.

Q. Do you have personal knowledge that they did?

MR. SHAW: Again, if any such knowledge, if you have it, it would come from a privileged communication, I instruct you not to divulge that.

A. Yeah, any knowledge would come from privileged communications.

Q. What is your understanding of how sending the notice of termination was in error?

A. As I mentioned earlier, my understanding is that the securities under the repo were to be purchased assets under the sales transaction and, therefore, sending a notice to terminate the repo was a mistake.

Q. Were there any sale transaction documents that serve as the basis for your understanding that the securities under the repo were to be purchased assets under the sales transaction?

MR. SHAW: Objection to the form.

A. I mean, the clarification letter was a

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basis for it then.

Q. I am going to hand what you has been marked as Exhibit 25. Do you recognize this document, Mr. Kaplan?

A. Yes, I do.

Q. What is it?

A. It's the clarification letter between Barclays Capital Inc. and various Lehman entities.

Q. Is this the document that served as a basis for your understanding that the securities under the repo were to be purchased assets under the sale transaction?

A. Yes, it was one of the bases.

Q. What were the other bases?

A. Privileged communications.

MR. SHAW: Let's discuss that outside for a moment.

(Discussion held off the record)

A. Another basis was my conversations with Scott Lechner that I was reminded was not a privileged communication.

Q. That conversation was on September 17th, correct?

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A. Correct.

Q. At that time, were there any other bases for your understanding that the securities under the repo were to be purchased assets under the sale transaction?

A. Only pursuant to privileged communications.

Q. Is there any other way, besides what we have discussed, that serving this notice was an error?

MR. SHAW: Objection to form.

A. I'm not sure what you're asking.

Q. Have you told me about all the ways in which serving the notice of termination was an error?

MR. SHAW: Objection to form.

A. I mean, from my perspective, the basic error was that there was no need to send a notice that was -- given that the intention was to have Barclays purchase the securities under the sale transaction.

Q. Do you know whether the intention to have Barclays purchase securities under the sale transaction was a part of the asset purchase

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agreement?

MR. SHAW: Objection to form.

To the extent any such knowledge might come from privileged communications, I would ask you not to divulge those.

MS. DEL MEDICO: Again, I object to your objection. This is material that you affirmatively offered in his declaration.

MR. SHAW: I understand your position. And we will stick with my objection.

A. I don't recall.

Q. Would you --

A. I don't recall, but I don't think the Fed replacement transaction was, you know, it was agreed that Barclays would enter into that at the time that the original asset purchase agreement was signed, but I don't recall and whether it is referred to in there or not.

MS. DEL MEDICO: Can we take a break?

MR. SHAW: Sure.

(Recess)

Q. Mr. Kaplan, when we first began the deposition, you told me that you, in your time at Barclays, had been involved with workouts and

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2 restructuring. Have you, were any of the
3 workouts or restructuring that you were involved
4 in workouts in bankruptcy court?
5 A. Some have involved bankruptcy court,
6 yes.
7 Q. What types of workouts have you been
8 involved in in the bankruptcy court context?
9 A. The primary -- my primary one that
10 comes to mind is the Enron bankruptcy.
11 Q. And have any of these bankruptcies
12 dealt with repurchase agreements?
13 MR. SHAW: Objection, foundation.
14 A. I'm trying to recall. In the case of
15 Enron, we did not have any repurchase agreements
16 and I'm certain that we have closed -- I've been
17 involved with closing out and terminating
18 repurchase transactions with some insolvent
19 counterparties, although I don't think our
20 involvement or my involvement included the
21 bankruptcy court in those cases.
22 Q. Are you aware of Section 559 of the
23 Bankruptcy Code?
24 A. I am.
25 Q. What do you know about Section 559 of

1 KAPLAN
2 opinion?
3 Q. I am asking his --
4 A. I am aware that there is a part of 559
5 that talks about excess value, and I don't have
6 the exact words in front of me, having to be
7 returned to the debtor, yes.
8 Q. In September of 2008, did you have any
9 conversations with anyone about any potential
10 issues under Section 559 of the Bankruptcy Code
11 that could be implicated based on the notice of
12 termination that Barclays issued?
13 A. No, I did not.
14 Q. Were you a part of any discussions
15 with Lehman or its representatives at Weil
16 Gotshal about what Barclays' rights would be in
17 the event of a termination of a repo?
18 A. No.
19 Q. And I understand that you never spoke
20 to anyone on the Lehman side of the table,
21 including Weil, about Section 559 of the
22 Bankruptcy Code, correct?
23 A. That's correct.
24 Q. Do you know if anyone at Barclays,
25 Barclays or its representatives spoke with

1 KAPLAN
2 the Bankruptcy Code?
3 MR. SHAW: To the extent your
4 knowledge of Section 559 of the Bankruptcy
5 Code involves legal advice from Barclays'
6 counsel, I would caution you not to reveal
7 that.
8 A. I'm familiar with 559 as dealing with
9 safe harbor for repo transactions, repurchase
10 transactions.
11 Q. What -- can you describe the safe
12 harbor for repo transactions for me?
13 MR. SHAW: If you have an
14 understanding apart from any legal advice
15 and legal analysis, you can give that.
16 A. I mean, like other safe harbors, it
17 deals with the ability to terminate the
18 transactions without having to be concerned
19 about the stays and also deals with -- it is a
20 safe harbor for preferences and transfers as
21 well.
22 Q. Do you know what happens to excess
23 collateral in a repurchase agreement under
24 Section 559?
25 MR. SHAW: Are you asking for a legal

1 KAPLAN
2 anyone on the Lehman side of the table,
3 including Weil Gotshal about Section 559 of the
4 Bankruptcy Code?
5 MR. SHAW: And again, if you have any
6 such knowledge, if such knowledge comes from
7 privileged communications, please don't
8 divulge that.
9 A. I am unaware of anything, I am unaware
10 of any conversations with Lehman or Weil on
11 those issues.
12 Q. After you understood that the notice
13 of termination was sent, did you know whether
14 there could be any potential consequences to
15 Barclays as a result of the error?
16 MR. SHAW: Objection to form.
17 A. Yeah, I wasn't concerned about
18 consequences. It was more it was inconsistent
19 with the transaction. And in the context of the
20 clarification letter, I thought it ought to be
21 cleaned up.
22 Q. Was the notice of termination sent
23 prior to the clarification letter being sent?
24 A. Yes.
25 Q. And how do you know that?

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KAPLAN

A. The notice was sent on the 19th and the clarification letter wasn't signed until early morning on the 22nd.

Q. Was one of the reasons -- was serving the notice of termination pursuant to the master repurchase agreement an error because of its implications under Section 559 of the Bankruptcy Code?

A. No, it was an error because there was no intention to terminate the transaction and deal with it outside of the purchase agreement.

Q. Can you turn to Exhibit 25 of the clarification letter, please. And also your declaration, if you can get those all together.

In paragraph 4 of your declaration, you state that the parties corrected the error in paragraph 13 of the clarification letter. Paragraph 13 of the clarification letter provides in pertinent part that the notice of termination relating to the Barclays repurchase agreement dated September 19, 2008 is hereby deemed and rescinded and void ab initio in all respects, is that correct?

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KAPLAN

Do you want to change the question to did you draft paragraph 13?

MS. DEL MEDICO: No, I want him to answer whether he had any involvement in the drafting paragraph 13.

MR. SHAW: To the extent that you had any privileged communications regarding paragraph 13, I would caution you not to answer.

A. I would answer nothing that's not privileged.

MR. MILLS: Can you answer that yes or no?

MR. SHAW: Answer it yes or no.

A. Yes, I had some involvement in drafting section 13.

Q. Do you know who else had involvement in drafting Section 13?

A. Yes, I know at least some of the people involved.

Q. Who?

A. One of my colleagues, Jason White.

Q. Anyone else?

A. I would assume lawyers representing

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KAPLAN

A. That's correct.

Q. When did you first become aware of paragraph 13 of the clarification letter?

A. Privilege question.

Sorry.

(Discussion held off the record)

A. Outside of the context of privileged communications, I was certainly aware of it when I saw the final clarification letter. It must have been on Monday the 22nd.

Q. And did you, prior to Monday the 22nd or -- strike that.

At any time, did you have any involvement in drafting paragraph 13 of the clarification letter?

MR. SHAW: Objection to the extent it calls for any privileged information.

MS. DEL MEDICO: Drafted personally.

MR. SHAW: That's not the question you asked.

MS. DEL MEDICO: I asked if he had any involvement in drafting paragraph 13 of the clarification letter.

MR. SHAW: Which is not quite a draft.

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KAPLAN

Barclays either at Cleary Gottlieb and Sullivan & Cromwell, but exactly which ones, I'm not sure.

Q. I am going to hand what you has been marked already Exhibit 580B. Could you just take a look at this document and tell me if you have seen it before?

A. OK. Don't know if I have or not. I don't recall it specifically.

Q. Did paragraph 13 have any other purpose in the clarification letter other than correcting the error that you describe in paragraph 4 of your declaration?

MR. SHAW: Objection, calls for legal conclusion, foundation, vague.

Q. Do you understand what I asked?

A. I'm not sure if I do, no.

Q. What was the purpose of paragraph 13 in the clarification letter?

A. In just reading it, in addition to the last sentence, which talks about the notice of termination being rescinded and void, the whole first part of it very clearly talks about the way that the repurchase agreement was being

KAPLAN

dealt with under the sales transaction; namely, no further obligations of the parties, so no obligation on the part of LBI to, you know, pay a repurchase price or make any payments or any obligation on the part of Barclays to return securities or any other obligations.

Q. Does paragraph 13 correct any other error other than the serving of the notice of termination?

A. Not that I am aware of.

Q. At any time, were you part of any discussions with Lehman or its representatives at Weil Gotshal about paragraph 13 of the clarification letter?

A. No, I was not.

Q. To your knowledge, was anybody on Barclays' side of the table, Barclays or its representatives involved in discussions with Lehman or its representatives about provisions in the clarification letter that address the issue of the termination of the repo?

MR. SHAW: Again, to the extent that you -- that any information that you might have relates or is a privileged

KAPLAN

Q. It is the master repurchase agreement.

A. OK.

Q. I just have a couple of follow-up questions on the master repurchase agreement. Section 11 of the master repurchase agreement sets out the events of default, correct?

A. Correct.

Q. And as Mr. Shaw so ably pointed out, section 11A provides that there is an event of default automatically upon an act of insolvency, correct?

A. Correct.

Q. Are you aware of any writings signed by both Barclays and Lehman prior to September of 2008 that modify section 11 of the master repurchase agreement?

A. I'm not aware of it, no.

MR. DAKIS: I have nothing further.

EXAMINATION BY

MR. MILLS:

Q. I just have a few questions. I'm Carl Mills from Hughes, Hubbard & Reed and we represent the SIPA trustee, James Giddens.

You testified earlier, in addition to

KAPLAN

communication, I would caution you not to divulge it.

MS. DEL MEDICO: Even on a yes or no answer on that?

A. I don't have any specific knowledge aside from this document you just showed me.

MS. DEL MEDICO: They may have some clean up.

EXAMINATION BY

MR. DAKIS:

Q. Just a couple of clean-up questions.

For the record, I am Robert Dakis from Quinn, Emanuel, Urquhart, Oliver & Hedges. We represent the committee of unsecured creditors in this matter.

You testified earlier that you were aware of Section 559 of the Bankruptcy Code, correct?

A. Correct.

Q. Were you aware of Section 559 in September of 2008?

A. Yes, I would have been, yes.

Q. Can you please pull out Exhibit 117.

MR. SHAW: The master repo?

KAPLAN

the Fed repo, you were involved in some other aspects of the Lehman Barclays deal, correct?

A. That's correct.

Q. Do you remember any specific aspects of the deal you were also working on?

A. I was involved with some of the discussions involving DTCC.

Q. When did you first become involved in discussions involving the DTCC?

A. In the evening of September 17th.

Q. And what was the nature of those discussions?

MR. SHAW: I assume you're asking only about nonprivileged discussions with outside parties, not about the internal discussions with Barclays or its outside counsel.

MR. MILLS: If the nature of those discussions was privileged, then no.

A. After the meeting at the New York Fed, Gerard Larocca said he wanted to go over to the DTCC and asked me to join him. So we went to DTCC and met with maybe, among others, Larry Thompson, Issac Montal and Don Donahue. And I think that from Gerard's perspective, we were

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----x

In Re:

Chapter 11

LEHMAN BROTHERS Case No. 08-13555(JMP)
HOLDINGS, INC., et al, (Jointly Administered)
Debtors.

-----x

DEPOSITION OF MARLO KARP
New York, New York
January 20, 2010

Reported by:

MARY F. BOWMAN, RPR, CRR
JOB NO. 27306

Page 6

1 KARP
2 THE VIDEOGRAPHER: This is the start
3 of tape number one of the videotape
4 deposition of Marlo Karp in the matter In Re
5 Lehman. Today's date is January 20, 2010,
6 at approximately 9:45 a.m.
7 Will the court reporter please swear
8 in the witness.
9 MARLO KARP,
10 called as a witness by the parties,
11 having been duly sworn, testified as follows:
12 EXAMINATION BY
13 MR. THOMAS:
14 Q. Good morning, Mrs. Karp. Would you
15 please state your full name and address for the
16 record?
17 A. Marlo L. Karp, 2 Ashley Place, Towaco,
18 New Jersey, 07082.
19 Q. Have you been deposed before?
20 A. No.
21 Q. Do you have an understanding of how
22 this process works in terms of, I'll be asking
23 questions and the court reporter will be taking
24 down your answers, and your attorney may from
25 time to time have an objection to the form of

Page 8

1 KARP
2 educational background?
3 A. I have a BS/BA from Washington
4 University in St. Louis, and I have a master's
5 from Columbia University.
6 Q. And what is the master's in?
7 A. Finance.
8 Q. So are you an accountant?
9 A. Yes, I am.
10 Q. When did you first have any
11 involvement with the Lehman/Barclays
12 transaction?
13 MR. ROTHMAN: Are you asking her
14 personally or Deloitte?
15 Q. That's a good distinction. They may
16 conflate.
17 When did Deloitte first have any
18 involvement with the Barclays/Lehman
19 transaction?
20 A. We received a call from SIPC, either
21 the 15th or 16th of September, asking whether or
22 not Deloitte might be -- have the time and be
23 able to help if Lehman Brothers, Inc. went into
24 liquidation.
25 Q. And was it a -- what was your

Page 7

1 KARP
2 the question, after which he makes the
3 objection, you can go ahead and answer the
4 question, unless he instructs you not to, and if
5 at any point in time you're not clear what I am
6 asking you, please ask me to go ahead and
7 rephrase.
8 A. OK.
9 Q. Would you please briefly describe your
10 professional background?
11 A. Sure. I have been with Deloitte since
12 1990, right out of college. I started out in
13 the audit practice for banking and securities
14 and continued in that role until 1995, in the
15 summer, where I joined the regulatory consulting
16 practice and focused more on projects where
17 there were issues where firms had -- brokerage
18 firms had with regulators, and helping them deal
19 with those issues with the regulators.
20 I have also done SIPA liquidations
21 during that time, as well as fraud
22 investigations.
23 Q. And your current position?
24 A. I'm a partner.
25 Q. Can you please briefly describe your

Page 9

1 KARP
2 understanding of what the role would be for
3 Deloitte?
4 A. They spoke to John Manley about it,
5 and it was to be the advisors to the trustee and
6 provide bookkeeping services, help with claims.
7 It was typically the role that we play.
8 Sometimes it would involve some forensic
9 analysis, as well.
10 But they weren't clear as to what the
11 role would be, just at that point they just
12 wanted us to know whether or not we would be
13 able to do -- work on the liquidation if it came
14 to fruition.
15 Q. You understand you have been
16 designated as a witness here to give testimony
17 on behalf of Deloitte on various topics?
18 A. Um-hm, yes.
19 Q. And did you personally become involved
20 in any way in the Barclays/Lehman transaction
21 that week of, let's say September 15th to the
22 22nd?
23 A. The transaction itself?
24 Q. Well, in the transaction, and I mean
25 that loosely. I don't mean actually sitting

Page 10	Page 11
<p>1 KARP</p> <p>2 down and typing it up, but in -- were you aware</p> <p>3 it was going on, the negotiations?</p> <p>4 A. We had received a couple phone calls</p> <p>5 from SIPC as things progressed. As it got</p> <p>6 closer they wanted to know whether or not we had</p> <p>7 cleared conflicts in case the liquidation did</p> <p>8 come to fruition, and about the 18th, some of my</p> <p>9 partners had had discussions with Jim Giddens,</p> <p>10 who hadn't yet been appointed trustee, about</p> <p>11 what the potential role might be and whether or</p> <p>12 not it was getting close to fruition.</p> <p>13 He also shared a draft copy of the</p> <p>14 APA, which I received as well, just to read</p> <p>15 through. They had asked whether or not we had</p> <p>16 any specific questions.</p> <p>17 Q. Did you have any questions or comments</p> <p>18 regarding the APA?</p> <p>19 A. I didn't. I believe a couple of my</p> <p>20 partners responded back with one or two</p> <p>21 questions, but for the most part they really</p> <p>22 didn't have many questions, as our role wasn't</p> <p>23 really defined except to say was anything</p> <p>24 unclear to us.</p> <p>25 Q. If there was something unclear in the</p>	<p>1 KARP</p> <p>2 contract, you may have raised that?</p> <p>3 A. It was purely unclear as if we</p> <p>4 understood -- if we had any specific questions</p> <p>5 as to -- that might affect our role, and we</p> <p>6 didn't have any specific questions regarding our</p> <p>7 role. That was all we looked at it from.</p> <p>8 Q. At any point did anyone from Deloitte</p> <p>9 provide an analysis of the APA or the purchase</p> <p>10 agreement?</p> <p>11 A. No. We were not asked to do so.</p> <p>12 Q. Let me go ahead and show you a</p> <p>13 document that without the cover has been</p> <p>14 previously marked, but we will go ahead and mark</p> <p>15 this as 566.</p> <p>16 (Exhibit 566, document Bates stamped</p> <p>17 DT 303 to 356 marked for identification, as</p> <p>18 of this date.)</p> <p>19 MR. ROTHMAN: Go ahead, look through</p> <p>20 it.</p> <p>21 Q. Does that appear to be the document</p> <p>22 you referred to as the APA and that Deloitte</p> <p>23 received on approximately September 18, 2008?</p> <p>24 A. The draft that we received had a bunch</p> <p>25 of markups on it, handwritten notes. So it</p>
Page 12	Page 13
<p>1 KARP</p> <p>2 doesn't appear to be the same.</p> <p>3 Q. OK. Does it -- allowing -- and we</p> <p>4 will try to grab the version with the</p> <p>5 handwritten notes, but does it otherwise appear</p> <p>6 to be the same document, allowing for the fact</p> <p>7 that you may have seen a draft that was</p> <p>8 initially attached to the motion for the sale</p> <p>9 order which had handwriting on it?</p> <p>10 A. I mean they both said "asset purchase</p> <p>11 agreement" on them. I don't know if all the --</p> <p>12 if everything stayed the same within it.</p> <p>13 Q. Did you ever get a different copy or</p> <p>14 did Deloitte ever receive a different copy of</p> <p>15 the APA other than that one originally provided</p> <p>16 on September 18?</p> <p>17 A. Yeah. Later on sometime in October, I</p> <p>18 think we got a final version of the APA with the</p> <p>19 signed pages.</p> <p>20 MR. THOMAS: Counsel, do you know what</p> <p>21 the -- I am going to go ahead and mark this</p> <p>22 now even though it has been marked before.</p> <p>23 (Exhibit 567, letter dated 9/20/2008</p> <p>24 marked for identification, as of this date.)</p> <p>25 Q. Showing you a document we have marked</p>	<p>1 KARP</p> <p>2 as Exhibit 567, do you recognize this document?</p> <p>3 A. Yes.</p> <p>4 Q. Can you describe what it is, please.</p> <p>5 A. I believe it is referred to as the</p> <p>6 clarification letter.</p> <p>7 Q. And did you understand it to revise</p> <p>8 and amend the original asset purchase agreement?</p> <p>9 MR. ROTHMAN: Objection to the form.</p> <p>10 A. I understood that it was in addition</p> <p>11 to the asset purchase agreement. I don't know</p> <p>12 that it -- I know it was afterwards that may</p> <p>13 have changed some of the terms.</p> <p>14 Q. And is it your understanding that this</p> <p>15 is part of the deal that the parties consummated</p> <p>16 on September 22, 2008?</p> <p>17 A. That's how it has -- sorry.</p> <p>18 MR. ROTHMAN: Go ahead.</p> <p>19 A. That's how it has been described to</p> <p>20 me.</p> <p>21 Q. When was the first time you received</p> <p>22 that document, the clarification letter?</p> <p>23 A. It would have been the same time I</p> <p>24 received the final version of the APA, so early</p> <p>25 October.</p>

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KARP

Q. And what was the -- why was Deloitte sent a version of the final APA and the clarification letter?

MR. ROTHMAN: Let me just caution you not to reveal any conversations or things that you might have learned from counsel concerning that question.

A. We generally request documents for our engagements for our file so we understand what's going on. These would be typical documents we would have requested versions of to understand.

Q. Was anyone from Deloitte at any of the bankruptcy court hearings related to the Lehman/Barclays transaction in September of 2008?

A. No.

Q. Was Deloitte following those hearings in any way?

A. Following, no. I believe we received a phone call at that weekend letting us know that the hearing, that the hearing had gone through, the sale was going to go through, but we were asked not to do anything else at that time.

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KARP

information about where we could sit, how we would get documents, how we would get books and records.

Basically sat there -- it was an organizational meeting at that point, and that is all we were asked to do for pretty much that first week, was just try to get organized, start getting teams organized, people, because we were asked to not do anything while the customer transfers were going on.

Q. What was the goal of the getting organized? Getting organized to do what?

A. To proceed with the SIPA liquidation process, so how would we do claims, how would we marshal the assets of the firm, just build on -- what teams would work on what with which attorneys from Hughes Hubbard, and that was -- and where would we sit, because it would be a large group of people.

Q. When was the first time Deloitte had conversations with someone other than Hughes Hubbard or the trustee concerning the transaction?

A. We received a phone call from SIPC

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KARP

Q. Is that a phone call you received personally?

A. No.

Q. Was -- was Deloitte aware that the clarification letter was being finalized over that weekend of the 20th and 21st over at Weil Gotshal?

A. I don't know when we knew about the clarification letter.

Q. Was anyone from Deloitte ever over at Weil or Lehman prior to September 22?

A. No.

Q. So you were, Deloitte was relying on reports from others in terms of what was going on with the negotiation of the deal, the finalization of the deal?

A. Yes.

Q. And what was the -- what work did Deloitte do in that month of September?

A. We attended a meeting on the 22nd at 75 -- the 745 building, the building with the trustee, his counsel, Weil Gotshal, a lot of attorneys, a lot of former Lehman personnel there as well, where we started getting some

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KARP

back on the 15th or 16th about the potential for it, and John Manley had subsequent conversations with SIPC once or twice during that week as it became clear it might actually go into liquidation, to find out if there were conflicts.

Q. Did Deloitte ever meet with Weil Gotshal to discuss the deal?

A. No.

Q. Do you know if they met with Houlihan?

A. No.

Q. No, you don't know or --

A. No, they did not.

Q. Did it ever become important to Deloitte's work to understand what assets and liabilities had been transferred as part of the Lehman Barclays sale transaction and what hadn't?

A. Not in that context. It became important to understand what assets were under the trustee's control in order to begin the customer claim process, which is where our focus was.

Q. To understand what assets were still

5 (Pages 14 to 17)

KARP

under the trustee's control, was it important to understand which of LBI's assets had been transferred over to Barclays?

A. It was part of the -- it was part of the understanding, but our first priority was to get a handle on what assets were -- what cash securities and other assets were under the trustee's control or we needed to get under the trustee's control. That was our primary responsibility.

Q. So you were -- the goal was more in terms of establishing what the trustee still controlled, but one part of achieving that goal was understanding what had been transferred in the purchase agreement and what had been retained, correct?

MR. ROTHMAN: Objection to the form. You can answer the question.

A. That became the next step of the process, but we didn't have access to the books and records to validate a lot of that information, so it became more important for us to make sure that we could get all the assets that were -- that we thought belonged to LBI

KARP

closing, all securities and other assets held by purchaser under the September 18, 2008 repurchase agreement, among purchaser and/or its affiliates and LBI and/or its affiliates and the Bank of New York as collateral agent (the Barclays repurchase agreement), shall be deemed to constitute part of the purchased assets in accordance with paragraph 1A2 above."

Do you see that language?

A. Yes.

Q. Was it your understanding that as part of the Barclays sale transaction, Barclays was acquiring all of the collateral associated with what was the Fed repo?

MR. ROTHMAN: Objection to form.

I don't know if you laid enough of a foundation here, but she has testified she had nothing to do with the negotiation or the drafting of this agreement, so if all you're asking her -- I guess I am not clear whether you are asking her independent of the agreement or what she understood as she read it in October. I don't think you're entitled to her interpretation of it in

KARP

under the trustee's control first, and as we got access we would then proceed to see what was left, what was still owed to customers.

Q. When Deloitte received the clarification letter in early October, did it review the clarification letter?

A. I know I read through parts of it. I would -- I don't know about the others.

Q. Let me ask you to look at 567 and ask about a few sections that are -- on the first page, see where it says "purchased assets, excluded assets"?

A. Yes.

Q. And then subparagraph 2 there, capital A, it says, "The securities owned by LBI and transferred to purchaser or its affiliates under the Barclays repurchase agreement as defined below, as specified on Schedule A, previously delivered by seller and accepted by purchaser." Do you see that?

A. Yes.

Q. And if you flip to page 5, paragraph 13, where it's entitled "Barclays Repurchase Agreement," it says, "Effective at

KARP

October.

MR. THOMAS: The objection I guess is to foundation.

I am asking based upon her receiving it and having read it and the plain language of it. And if she had some different understanding, that's fine. But this relates to what assets went over and what assets didn't, what assets were under the control of the LBI. So that's the basis for it.

MR. ROTHMAN: I will give you a little leeway on this, but she is not an expert, and she had no personal involvement with drafting or creating this document. So it is not really fair to ask her to just interpret for you her view.

MR. THOMAS: We are getting into kind of a long speaking, coaching objection, and I understand the objection is to foundation. I think there is some foundation if you read the plain language of the letter.

Q. So again, the question is, did you understand that as part of the sale transaction,

Page 22	Page 23
<p>1 KARP</p> <p>2 Barclays was acquiring all of the collateral</p> <p>3 associated with the Fed repo?</p> <p>4 A. I didn't understand that as part of</p> <p>5 this clarification letter. It had been told to</p> <p>6 me through counsel, the trustee's counsel.</p> <p>7 MR. ROTHMAN: Please don't reveal</p> <p>8 things that have been told to you by the</p> <p>9 lawyers.</p> <p>10 THE WITNESS: OK.</p> <p>11 Q. Reading this language, is that how you</p> <p>12 understand these terms, that Barclays is to</p> <p>13 receive the collateral associated with what was</p> <p>14 the Fed repo?</p> <p>15 MR. ROTHMAN: Objection to the form.</p> <p>16 A. I'm not an attorney, but reading this,</p> <p>17 I mean it says purchased assets include the</p> <p>18 collateral. And it defines the collateral here.</p> <p>19 So --</p> <p>20 Q. So it is pretty clear that they get</p> <p>21 that collateral?</p> <p>22 MR. ROTHMAN: Objection to the form.</p> <p>23 It is not a proper question to ask her. It</p> <p>24 really isn't.</p> <p>25 MR. THOMAS: Counsel, we can't have</p>	<p>1 KARP</p> <p>2 these long speaking objections in violation</p> <p>3 of the federal rules. OK. Just a clear</p> <p>4 statement. I understand "objection to form</p> <p>5 based on lack of foundation."</p> <p>6 MR. ROTHMAN: You need to ask proper</p> <p>7 questions of the witness.</p> <p>8 MR. THOMAS: Those are proper</p> <p>9 questions.</p> <p>10 MR. ROTHMAN: They are not.</p> <p>11 MR. THOMAS: We can argue that later.</p> <p>12 What is not proper is for you to try to</p> <p>13 coach the witness into answering a certain</p> <p>14 way while I am asking the question.</p> <p>15 MR. ROTHMAN: I am not doing that.</p> <p>16 MR. THOMAS: We can argue about</p> <p>17 foundation later, but the rules are very</p> <p>18 clear. Objections are to be limited.</p> <p>19 Q. Let me ask you to turn back to page 1,</p> <p>20 subsection 2, part capital B, where it says,</p> <p>21 "Such securities and other assets in LBI's</p> <p>22 clearance boxes as of the time of the closing</p> <p>23 which at the close of business on September 21,</p> <p>24 2008 were specified -- were as specified on</p> <p>25 Schedule B."</p>
Page 24	Page 25
<p>1 KARP</p> <p>2 Do you see that language?</p> <p>3 A. Um-hm, yes.</p> <p>4 Q. Did you understand as part of the</p> <p>5 sales transaction, Barclays was acquiring</p> <p>6 clearance box assets?</p> <p>7 MR. ROTHMAN: Objection to the form.</p> <p>8 Again, I caution you not to reveal</p> <p>9 information that you received from the</p> <p>10 lawyers.</p> <p>11 A. Then I can't really talk about it.</p> <p>12 Q. Just reading this document, not based</p> <p>13 on what lawyers may have said, is that how you</p> <p>14 would interpret capital B of subsection 2, that</p> <p>15 Barclays was acquiring clearance box assets?</p> <p>16 MR. ROTHMAN: Objection to the form.</p> <p>17 Again, if you can't answer that</p> <p>18 question because of the things that lawyers</p> <p>19 have already told you, then please don't</p> <p>20 answer the question.</p> <p>21 A. All my discussions were with attorneys</p> <p>22 on this.</p> <p>23 Q. Did you read that when you received</p> <p>24 the clarification letter in early October?</p> <p>25 A. I may have. I honestly don't</p>	<p>1 KARP</p> <p>2 remember.</p> <p>3 Q. So independent, do you have an</p> <p>4 understanding -- can you read that language and</p> <p>5 tell me independently how you interpret it?</p> <p>6 MR. ROTHMAN: Sitting here today?</p> <p>7 MR. THOMAS: Yeah, independent of --</p> <p>8 MR. ROTHMAN: I'm not going to let her</p> <p>9 do that. She has already talked to</p> <p>10 attorneys about it. It has already infected</p> <p>11 whatever she is going to think about it as</p> <p>12 she reads it now.</p> <p>13 It's not -- we are not here to have</p> <p>14 her sit here and read documents as of today.</p> <p>15 MR. THOMAS: Well --</p> <p>16 MR. ROTHMAN: That's not -- you are</p> <p>17 here to elicit facts from her.</p> <p>18 MR. THOMAS: You are really</p> <p>19 obstructing the deposition. You are really</p> <p>20 doing a lot of coaching and speaking. I</p> <p>21 really prefer you just do it the way the</p> <p>22 rules provide.</p> <p>23 If you are going to instruct the</p> <p>24 witness not to answer a question, that's</p> <p>25 fine. We'll just build it into the motion.</p>

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KARP

Q. If you would turn to the page -- the second page and subpart capital C. "Exchange-traded derivatives." Do you see where it says, "Exchange-traded derivatives and any property that may be held to secure obligations under such derivatives"?

A. Yes.

Q. Do you recall if when you received this document back in October and reviewed it, that you understood that exchange-traded derivatives and any property that may be held to secure obligations under such derivatives were part of the assets being transferred to Barclays?

MR. ROTHMAN: Objection to the form.

A. I don't remember reading it and understanding. What I would have understood came from attorneys.

Q. Have you ever had -- have you ever believed that the exchange-traded derivatives were not transferred as far as this sale transaction?

MR. ROTHMAN: Objection to the form.

Again, please don't reveal anything

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KARP

transferred to Barclays.

Q. And what was your understanding with respect to the options business from that meeting?

A. The options --

MR. ROTHMAN: Objection to form.

A. The options, you mean the OCC options or the options on futures?

Q. OCC options.

A. My understanding from the -- for the options was that options were being transferred in total to Barclays.

Q. Turning back to the first exhibit we looked at, 566, if you turn to the section "Definition of Purchased Assets," page 6 of the document, Bates stamped DT 313, do you see it has a list of purchased assets?

A. Yes.

Q. Did Deloitte at any time attempt to value any of the assets listed under "purchased assets"?

A. The only time we attempted to value -- sorry, we did not attempt to value anything related to this listing.

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KARP

you learned solely from attorneys.

A. Were not transferred as in not physically transferred or --

Q. Were not transferred pursuant to the agreement.

A. Could you define exchange-traded derivatives for me, as to what that includes?

Q. OK. Well, are you familiar with that term?

A. I am, but I've heard it used different ways, and so I'm -- I just want to make sure that I'm talking about the right --

Q. How do you use the term "exchange-traded derivatives"?

A. I would -- my interpretation is futures and options on futures.

Q. Using that definition, has there ever been any question in your mind that those exchange-traded derivatives as you just defined them were transferred to Barclays as part of the sale transaction?

A. My understanding from a meeting where the CFTC participated was that futures, the futures business related to customers was

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KARP

Q. Can I ask what -- it seems like you were clarifying your language. Was there something you were going to say before that?

A. We have been in the process of creating a draft balance sheet, but Deloitte hasn't been doing the valuations.

Q. Who has been doing the valuations for the draft balance sheet?

A. The valuations have been coming from third-party sources and Barclays.

Q. What were the third-party sources?

A. They are publicly available sources. The two that I remember are Bloomberg and IDSI.

Q. Is that work still going on?

A. Yes.

Q. When did Deloitte first work on in any way a balance sheet for BLI?

A. It started in late '08. We did not have access to the books and records until around that time to be able to get the details to start creating a balance sheet.

Q. What was the purpose of creating a balance sheet?

A. To determine what the assets and

8 (Pages 26 to 29)

1 KARP
2 liabilities existed as of 9/19/08, the date of
3 liquidation.
4 Q. And Deloitte is still working on that
5 balance sheet today?
6 A. Yes.
7 Q. After you got the books and so forth,
8 records, why is it taking so long to do the
9 balance sheet?
10 MR. ROTHMAN: Objection to the form.
11 A. There is a lot of reconciliation work
12 that had to be done in order to create the
13 balance sheet.
14 Q. And just explain in a little more
15 detail the type of reconciliation work.
16 A. Yes. There were over 200,000 failed
17 transactions between LBI and LBIE that need to
18 be reconciled.
19 There were, I believe, 10, 11 thousand
20 cash breaks related to the bank accounts.
21 We had difficulties in obtaining
22 statements from depositories where securities
23 were being held. All that took time to get the
24 statements and the information and to begin
25 reconciling the data.

1 KARP
2 MR. ROTHMAN: Objection to the form.
3 A. We didn't -- we didn't agree or
4 disagree. That was -- the agreement was to rely
5 upon Barclays' pricing.
6 Q. Let me ask more specifically about a
7 couple of these items. First, do you know as of
8 September 16 or thereabouts the amount of
9 retained cash that LBI had?
10 A. No.
11 Q. And when I say "you," I mean Deloitte,
12 not just yourself.
13 A. No, we didn't.
14 Q. Just so I understand, Deloitte has
15 never attempted to identify or figure out the
16 value of these items listed under the purchased
17 assets?
18 A. No.
19 Q. And that would include efforts even
20 using some other third parties to help with
21 valuation? Deloitte has never made that effort
22 to try to identify the value of these items?
23 MR. ROTHMAN: Objection to the form.
24 A. Not these specific -- not -- we -- the
25 only effort we made from putting together

1 KARP
2 And in addition, our ability to access
3 the data came in spurts, as we worked through
4 different issues with Barclays on access.
5 Q. Was it difficult to value some of
6 LBI's assets?
7 MR. ROTHMAN: Objection to the form.
8 Objection -- go ahead.
9 A. We didn't value the assets.
10 Q. Was it difficult to obtain valuations
11 of the assets that you believed, that Deloitte
12 believed were reliable valuations?
13 MR. ROTHMAN: Objection to form.
14 A. We didn't say one way or the other
15 whether or not the valuations were reliable.
16 That determination was not made by Deloitte.
17 Q. Who made that determination?
18 A. That -- Barclays provided services by
19 which their price verification group looked at
20 the valuations that were provided and questioned
21 whether or not, whether or not -- they did their
22 questioning methodologies to determine whether
23 or not the valuation methods were appropriate.
24 Q. Did Deloitte agree or disagree with
25 Barclays' determinations?

1 KARP
2 information was for a balance sheet. We did not
3 work off this document for these items.
4 Q. OK. Did Deloitte, either itself or --
5 when I ask if Deloitte values something, I am
6 going to include efforts where Deloitte might
7 rely on some third party to help establish that
8 value. Understood?
9 A. Yes.
10 Q. Did Deloitte ever attempt to value the
11 assets in subpart B of the purchased assets, the
12 deposits referred there? As of -- value them as
13 of September 16, 2008, or anytime that week?
14 A. No.
15 Q. Same question for subpart C, the
16 transferred real property leases.
17 A. No.
18 Q. Now, subpart D refers to a list of
19 securities and other assets. Do you see that?
20 A. Yes.
21 Q. Has Deloitte ever attempted to value
22 as of September 16 or anytime that week the
23 assets in subpart D?
24 A. To the extent that those assets would
25 be there on 9/19, they would have been part of

1 KARP
2 the value, the balance sheet that was prepared
3 for -- in that inventory section.
4 Q. Does Deloitte know what precise assets
5 are being referred to in subpart D?
6 A. No.
7 Q. Is there any list of CUSIPs, to
8 Deloitte's knowledge, that identifies what
9 assets -- list of CUSIPs or other list or
10 document that identifies exactly what are the
11 assets in subpart D?
12 A. Not that total to 70 billion -- that
13 total to 70 billion, we don't have that list.
14 Q. What other list do you have that might
15 relate to subpart D?
16 A. We have a list of firm inventory off
17 the stock record as of 9/19.
18 Q. But Deloitte doesn't have an
19 understanding of how that list relates to the
20 category of items in subpart D?
21 A. No.
22 Q. To your knowledge, does anyone have a
23 list of the securities and other assets being
24 described in subpart D?
25 A. Not to my knowledge.

1 KARP
2 Q. Has the value of those items on the
3 list been updated at any point since
4 September 16, if you know?
5 MR. ROTHMAN: Objection to the form.
6 A. The items don't exist.
7 Q. What happened to the items?
8 A. DTC's FICC division stepped in and
9 liquidated the securities. Or closed them out.
10 Q. And when did that happen?
11 A. My understanding is that they stepped
12 in that week right after bankruptcy, and I'm not
13 sure how long the process continued. We are
14 still waiting for information from DTC on all
15 the closeouts.
16 Q. And if I went through the rest of
17 these lists, would Deloitte have any idea as to
18 the value of these items as of September 16,
19 2008, or thereabouts?
20 A. No.
21 Q. Do you know if the trustee has any
22 further knowledge about the value of these items
23 listed under "Purchased Assets"?
24 MR. ROTHMAN: Again, let me just
25 caution you not to reveal information you

1 KARP
2 Q. Does Deloitte have any idea of whether
3 the assets referenced in subpart D are, or were
4 worth 70 billion dollars or more or less as of
5 September 16?
6 A. No.
7 Q. Has Deloitte attempted to figure that
8 out?
9 A. No.
10 Q. In subpart E, it refers to 50 percent
11 of each position in the residential real estate
12 mortgage security. Do you see that?
13 A. Yes.
14 Q. Has Deloitte ever attempted to value
15 those positions? I am going to say ever, at any
16 time?
17 A. No.
18 Q. Is Deloitte aware of what assets
19 exactly are being referred to here?
20 A. We believe it refers to the TBA
21 mortgages.
22 Q. Is there a list of those mortgages?
23 A. Yes.
24 Q. Is that a list that Deloitte has?
25 A. Yes.

1 KARP
2 may have learned solely from lawyers.
3 Q. You can give a yes or no to begin
4 with.
5 A. I don't know.
6 Q. Now, you referenced an effort by
7 Deloitte to establish some valuations as of
8 September 19, 2008. Is that correct?
9 MR. ROTHMAN: Objection,
10 mischaracterizes her testimony.
11 A. We prepared a balance sheet, but we
12 did not do the valuations.
13 Q. But you attempted to gather
14 valuations, correct?
15 A. Yes.
16 Q. And can you describe the items that
17 you attempted to get valuations for?
18 A. It would have been market value of
19 assets and liabilities on the balance sheet to
20 the extent that these required outside market
21 values.
22 Q. What did Deloitte do to first
23 establish what assets were still -- still
24 belonged to LBI after the Barclays transaction?
25 MR. ROTHMAN: Objection to form.

KARP

A. We prepared a balance sheet as of 9/19, irrespective of any transaction, and obtained bank statements and depository statements to reconcile to 9/19.

Q. Did that include obtaining a list of securities that were posted earlier in the week with the Fed as part of the Fed repo?

A. Not for the 9/19 balance sheet, it did not. It was only what existed at that date.

Q. So you're familiar with the collateral that was supposed to go to Barclays, that was part of the repo that was supposed to go to Barclays in return for Barclays putting up 45 billion dollars?

A. I understand that there was a Barclays repo transaction.

Q. And the securities, for the purposes of your 9/19 balance sheet, how were the repo securities treated as still belonging to LBI or not belonging to LBI?

MR. ROTHMAN: Objection to the form.

A. We would show a repo transaction. So it would be in a liability.

Q. And the liability at that point, the

KARP

liability would still be -- so the securities, the assets would still be on LBI's books but they would owe the 45 billion dollars; is that right?

A. Yeah. A repo transaction would be mark to market, so it wouldn't show 45 billion, but yes, in effect.

Q. How does it -- what does that mean, mark to market?

A. The securities are shown at the market value of the collateral versus the cash.

Q. OK. And what -- how did you determine what the market value was of those securities?

MR. ROTHMAN: Objection to the form.

A. The market value would have come -- excuse me -- would have come from the -- from Barclays.

Q. And do you recall the figure, the market value they identified for those securities?

A. I believe it was -- it was in the -- around 42, 43 billion was the market value of the securities delivered, plus there was some cash.

KARP

Q. Do you know if that was, Barclays was identifying actual market value, or that was just the nominal -- the marks that had been on those securities placed by others?

A. I don't know.

Q. Are you aware of Barclays raising questions that week as to the actual realizable value of some of those securities of LBI's?

A. Which week?

Q. That week of September 16th.

A. I wasn't involved that week.

Q. But I mean, by the 18th, you had reviewed the asset purchase agreement, Deloitte was at least doing something in -- so during -- putting aside whether you were involved at the time, are you aware that during that week, Barclays raised an issue concerning the actual market values of the securities of LBI, that LBI had put up for the repo?

MR. ROTHMAN: Objection to the form.

A. I would have learned any of that from counsel. Any discussion would have been with counsel.

Q. Let me show you a document we will

KARP

mark as 568. Do you recognize this as an e-mail from Vikram Ramani to you and others dated November 12, 2008?

A. Yes.

(Exhibit 568, document Bates stamped DT 495 marked for identification, as of this date.)

Q. And who is Vikram Ramani?

A. He is a member of my team.

Q. And do you see where it says, "Can you send me the list of securities that make up the 42.3 billion collateral that was delivered to Barclays via Lehman"?

A. Yes.

Q. What was the purpose of this work that Deloitte was doing at this time?

A. This work was in preparation for the December settlement that was eventually filed.

Q. What was Deloitte's role with respect to the December settlement?

A. Our role was to create a time line of the repo transaction for how securities moved, and to document it.

Q. Was it to make a recommendation with

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1 KARP
2 respect to the settlement?
3 MR. ROTHMAN: Objection to form.
4 That's a yes or no question.
5 Q. Yes.
6 A. No.
7 Q. Do you know if you received this list
8 that is being requested here, the list of
9 securities that made up the 42.3?
10 A. Yes.
11 Q. So you did receive it?
12 A. Yes.
13 Q. And after receiving it, what did
14 Deloitte do with it?
15 A. We compared it to the books and
16 records of LBI.
17 Q. For what purpose?
18 A. To see if we could see that that had
19 been recorded.
20 Q. I'm sorry, what does that mean, been
21 recorded?
22 A. That the records reflected that these
23 securities had been moved as part of a repo
24 transaction with Barclays.
25 Q. So Deloitte was just confirming that

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1 KARP
2 which resulted in other substitutions.
3 Q. Do you know that rough total volume of
4 substitutions that occurred?
5 A. Our rough estimate was approximately
6 about 9 billion out of the 42.3 billion, but at
7 the time we did it, the records weren't fully up
8 to date and we didn't rerun that since.
9 Q. Was it your understanding that the
10 collateral that was supposed to be transferred
11 to Barclays on that Thursday or Friday had
12 nominal marks placed on it by someone, in the
13 value -- in the range of roughly 49.7 billion?
14 MR. ROTHMAN: Objection to the form.
15 A. I'm sorry, for what was transferred?
16 Q. To what was supposed to be transferred
17 to Barclays? Do you recall that -- strike that.
18 Do you recall that there was kind of a
19 missing 7 billion dollars?
20 A. In my meetings with Barclays and with
21 JP Morgan, we had been told by both parties that
22 there was a gap of 7 billion that was expected
23 to be delivered.
24 Q. And what was your understanding of how
25 that gap occurred?

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1 KARP
2 those securities had actually moved to Barclays?
3 A. That the records reflected that that
4 movement had occurred.
5 Q. Was there any other purpose in looking
6 at the securities that had already moved in
7 connection with the settlement agreement?
8 A. We also compared it to the list of the
9 original securities pledged under the repo that
10 LBI had with the Federal Reserve, to see if they
11 were the same securities.
12 Q. And what did you find out?
13 A. We found out that there were
14 differences, that there were -- it was not the
15 same pool of securities.
16 Q. And did you obtain an understanding as
17 to why it was a different pool?
18 A. We had discussions with JPMorgan Chase
19 where part of the original 50 billion could not
20 move because it was part of a GCS program, which
21 restricted its ability to leave JP Morgan. So a
22 substitution had to occur from that.
23 We also understand that there were
24 operational inefficiencies that occurred during
25 the movement of the rest of the securities,

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1 KARP
2 A. My understanding from the JP Morgan
3 perspective was that they had released -- that
4 they had released approximately 42.3 billion.
5 There was a hard stop at DTC at 11 p.m., so no
6 more collateral could transfer, and that they
7 were requested by LBI to provide 7 billion
8 dollar cash financing to Barclays to cover the
9 difference.
10 And when I had conversations with
11 Barclays personnel, they explained that they --
12 there was a shortfall of approximately 7 billion
13 dollars in collateral that they had expected to
14 receive.
15 Q. Let me show you a document we will
16 mark as 569.
17 (Exhibit 569, document Bates stamped
18 DT 280 through 285 marked for
19 identification, as of this date.)
20 Q. Do you recognize this document?
21 A. Yes.
22 Q. Can you describe what it is, please?
23 A. This is a time line analysis, based
24 upon our discussions with JP Morgan on the
25 movement of the securities related to the repo

12 (Pages 42 to 45)

KARP

transaction, and some other information regarding LBI's -- what LBI owed to JP Morgan.

And then after the time line is a summary bullet discussion of -- discussions that we had with Barclays senior management and some former LBI employees.

Q. And who prepared this analysis?

A. Myself, Vikram Ramani and Chris Acosta.

Q. And looking at Bates stamp page DT 281, under the 7:30 p.m. column, or row, do you see in the second box where it says "Conclusion, LBI sent wrong files to JPM"?

A. Yes.

Q. Is that Deloitte's conclusion?

A. No. That was JP Morgan's -- how they relayed it to us.

Q. And what is -- can you just elaborate what that refers to, LBI sending the wrong files to JPM?

A. JP Morgan explained that securities that they released to be transferred back to Lehman, which would then move on to Barclays' account at Bank of New York, were being returned

KARP

or rejected by Bank of New York, and when that happened, the securities ended up coming back into the pledge -- into a pledged account at JP Morgan, LBI's pledge account at JP Morgan.

There was -- JP Morgan explained that they had a conference call with LBI to find out why this was occurring, and they said LBI came back and said, "We sent you the wrong file for the releases, and we are going to send a new one."

Q. And how did the wrong, sending the wrong file play into this? Is that what caused Bank of New York to reject some of them?

A. My understanding from JP Morgan was that Bank of New York was not expecting these specific securities, which is why they rejected them.

Q. Bank of New York, is it your understanding that Bank of New York was expecting securities that were posted as part of the Fed repo?

A. I don't know what Bank of New York was expecting.

Q. OK. JPM didn't explain why --

KARP

A. They didn't, they didn't know, they didn't have a listing of what Bank of New York was expecting.

Q. Did anyone from LBI or anyone else contradict the fact that LBI had sent wrong files to JPM?

A. No.

Q. OK. Can you pick up the story from there? Did they send the right files? Next line is, "LBI sends new files," and --

A. That's my understanding, is that LBI sent new files, and securities started to move again from JP Morgan.

Q. The next box down says, "JPM understands that Barclays is not getting the securities it was expecting and Lehman's DKs those securities."

Can you explain what DK'ing means?

A. DK is a term "don't know" and where they reject the securities, so they go back to where they started.

Q. And it says, "LBI continues to look for collateral to meet obligation to Barclays."

Why were they doing that? Can you

KARP

elaborate a little bit more on that?

A. My understanding from JP Morgan was that they, LBI had told them that they were looking for additional collateral to send to Barclays.

Q. And why did they need to do that?

A. JP Morgan, when we had the discussion with them, said that there was -- that they hadn't released enough collateral for the repo transaction. So LBI was looking for more collateral.

Q. And how much collateral was -- were they supposed to release in total? Do you recall?

A. It was approximately 49 billion of collateral, was the -- was what we had been told by JP Morgan.

Q. Is that -- in the bottom box there, it says, "Total of 42.3 billion in collateral has been sent to Lehman, comprised of 49.7 billion of deliveries and net 7 billion of DKs."

Can you explain what is being said there?

A. JP Morgan had told us that a total

KARP

amount released from JP Morgan Chase to Lehman was 49.7 billion, and there were some returns of approximately 7 billion, which in their records gave -- in their records showed a total release market value of 42.3 billion.

Q. And your subsequent studies showed that of the 42.3 billion collateral that did go over to Barclays, approximately 9 billion of that was collateral that was not part of the Fed repo collateral, that was different collateral, correct?

A. As I said before, that was based upon the stock record as it exists at that time, which was not fully updated. But yes, that was the estimate when we did the analysis.

Q. So from the Barclays perspective, A, they were short 7 billion in collateral, and B, approximately 9 billion of the collateral they got was different than what they were expecting?

MR. ROTHMAN: Objection to the form.

MR. TECCE: Join in the objection.

A. I don't know what Barclays was expecting.

Q. What they got was 7 billion dollars

KARP

what the actual realizable market value is?

MR. ROTHMAN: Objection to the form.

A. No.

Q. At no time did JP Morgan caution Deloitte about assuming that collateral value equated with actual realizable market value?

A. Are you talking in context of this repo transaction?

Q. In context of -- any context.

A. In context with the repo transaction, they did not -- they gave us reports with market value and did not say don't rely on this.

In context with other collateral that they were holding for LBI, they did raise questions about value, but that was their question.

Q. Let me go ahead and show you a document we will mark as Exhibit 570.

(Exhibit 570, document Bates stamped DT 276 through 278 with attachment marked for identification, as of this date.)

Q. Do you recognize this e-mail as being from JP Morgan's counsel to a number of people, including yourself?

KARP

less of collateral, plus of the collateral they got, approximately 9 billion of it was different than the Fed collateral, correct?

MR. HINE: Objection.

MR. ROTHMAN: Objection to the form.

MR. TECCE: Join in the objection.

Q. You can answer. They don't like me summing up your testimony, but --

A. My understanding is they didn't receive 7 billion worth of collateral, and our estimate was that 9 billion was not part of the Fed repo, but I do not know what Barclays was expecting to receive as part of the collateral.

Q. Turning the page -- sorry, let me go back.

The numbers that are being used here, 49.7 billion, 42.3 billion, do you know where those numbers come from?

A. The numbers on this page would have come from JP Morgan and their reports that they shared.

Q. Do you know -- and did JP Morgan caution Deloitte that these collateral figures really weren't reliable in terms of identifying

KARP

A. Yes.

MR. ROTHMAN: You are referring to the top e-mail?

MR. THOMAS: Yes.

A. Yes.

Q. And have you had a chance to review this document recently?

A. I read the top part of the e-mail.

Q. The e-mail says, "I have attached this spreadsheet with collateral values as of September 17, which was the last evening on which the Fed provided financing. I understand that these collateral values were furnished principally by third-party pricing sources, and we caution against using those values as reliable indicators of realizable value."

Do you see that?

A. Yes.

Q. Now, the collateral values that are being referred to are referring to securities that were once a part of the Fed repo, correct?

A. Yes. According to what this says, yes.

Q. So this is JP Morgan cautioning that

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the collateral value that were furnished by third-party pricing sources may not be reliable indicators of realizable value, correct?

A. Yes, for Annex A.

Q. Right. And can you describe what Annex A is?

A. Annex A is the list of securities that were going to be used for the settlement agreement to -- for the 7 billion dollar shortfall that was in dispute.

Q. Right.

And did Deloitte contest -- or did Deloitte believe that the collateral values associated with the securities in Annex A really were reliable as indicators of realizable value?

A. Deloitte didn't give an opinion on that.

Q. So just to understand what the securities are in Annex A, these are some of the securities that were part of the Fed repo that were supposed to go over to Barclays but didn't make it over there. Is that your understanding?

A. I don't know specifically what list Barclays may or may not have received of what

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they were supposed to get. My understanding was that these were securities that were going to be used to make, to make -- do the settlement.

Q. I think earlier you indicated that these securities were in fact securities that were once part of the Fed repo, pledged as part of the Fed repo, correct?

A. That's what the e-mail says, yes.

Q. And do you have any reason to believe that -- strike that.

So a good portion of what Barclays actually received in the 42.3 billion were part of securities pledged as part of the Fed repo, correct?

A. Yes.

Q. Do you have any reason to believe that the collateral value numbers for the securities attached to this exhibit as Annex A are any more or less reliable than the collateral value figures attached to the other Fed securities that Barclays actually did receive back in September?

MR. ROTHMAN: Objection to the form.

A. I didn't receive any indication from

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JP Morgan to question the value of the securities.

Q. That's because those securities weren't at issue as far as the settlement, correct?

A. I have no idea why they did or didn't.

Q. Did Deloitte -- obviously JP Morgan thinks it is relevant to the settlement as to what the actual values of the securities are that are going to be part of the settlement, correct?

MR. ROTHMAN: Objection to the form.

A. That's their attorney's interpretation.

Q. Did you ever -- did Deloitte ever have occasion to ask JP Morgan or anyone else whether the collateral values associated with the 42.3 billion marked, sent to Barclays, was any more reliable than the collateral values in Annex A to this document?

A. We didn't ask.

Q. Do you have any basis -- does Deloitte have any basis for saying that the 42 point -- the securities that make up the 42.3 billion,

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their collateral values are more reliable than the collateral values identified by JP Morgan in this document as being unreliable?

MR. ROTHMAN: Objection to the form.

A. I'm not sure I understand the question.

Q. Sure, let me try again.

JP Morgan is pointing out that the collateral values of the securities in Appendix A are not reliable, right?

A. I -- it doesn't say that they -- it says they caution against using them as reliable indicators. I don't know that they are saying they are unreliable.

Q. OK. JPM cautions against using them as reliable indicators.

A. Um-hm.

Q. Does Deloitte have any reason to believe that collateral value numbers associated with the securities that make up the 42.3 billion are any more reliable than any collateral value numbers that are associated with the securities in Appendix A of this exhibit?

KARP

MR. ROTHMAN: Objection to the form.

A. We didn't receive any note of caution on the 42.3 billion.

Q. But you didn't receive any note from JP Morgan about the values one way or another on the 42.3 billion, correct?

A. Correct.

Q. But that wasn't part of the settlement consideration that was being considered, correct?

MR. ROTHMAN: Objection to the form.

A. I think the entire transaction was part of the settlement consideration in order to know what the settlement should be.

Q. Was there any occasion for Deloitte and JPM to have a discussion about the collateral values of the 42.3 billion the way they are having here in this exhibit?

A. I don't remember such a discussion.

Q. In any event, Deloitte has never looked at or assessed or reached any conclusions about the reliability or accuracy of that 42.3 billion collateral value number; is that correct?

KARP

7 billion, they wanted 1.7 billion to go directly to BONY and 5.3 billion to go into -- I am sorry, 1.7 to go directly to BONY in an account for the benefit of Barclays, and 5.3 billion would be in an account for the benefit of Barclays that would be held at JP Morgan.

Q. And then down below that, Lehman sets aside collateral to cure the repo. What did you mean by curing the repo?

A. This was JP Morgan's explanation that Lehman said to cure the repo, that they had identified additional collateral that had come in to offset the balance of funds that they owe them.

But this was JP Morgan's explanation, to the extent that specifically means I'm not really -- they never really explained it in full detail.

Q. Was it your understanding of what JP Morgan was saying, that Lehman was looking for, trying to identify additional collateral to make up for the securities that were supposed to go over but didn't go over?

KARP

A. That's correct.

THE WITNESS: Could we take just a five-minute break.

MR. THOMAS: Oh, sure, sure. Anytime you want to take a break.

THE VIDEOGRAPHER: Time is 10:58. We are going off the record.
(Recess)

THE VIDEOGRAPHER: The time is 11:09.

We are back on the record.

BY MR. THOMAS:

Q. Let me ask you to turn back to the analysis that you did of the JP Morgan tri-party agreement. And what exhibit number is that?

MR. ROTHMAN: 569.

Q. 569. Turning back to Exhibit 569, on the second page, which is DT 282, there is an entry in the second column, first row, that says "Lehman requests that cash collateral for 7 billion in two tripartite shells, 1.7 billion and 5.3 billion."

Can you explain what all that means?

A. My understanding from JP Morgan was that although Lehman was requesting a total of

KARP

A. More for the loan that it received, the cash loan it received, which would be in anticipation of settling with Barclays.

Q. OK. On the couple columns over to the right, it says, "LBI ends up with a deficit of 23.2 billion," paren, "15.8 billion in unfunded Barclays tri-party and 7.4," parentheses, "8.6B collateral value, broker loan." Do you see that?

A. Yes.

Q. Can you explain the difference between the 7.4 billion and 8.6 billion dollar numbers there?

A. There was an overdraft balance in LBI's main cash account with JP Morgan, which was due to 7.4 billion related to settlements of transactions that had a -- which had collateral pledged against it of 8.6 billion.

Q. The 7.4 would be -- seemed to be the exact difference between 42.3 and 49.7. Can you explain the relationship there?

MR. HINE: Object to the form.

A. This was their analysis of what was owed to JP Morgan at the end of the day on the

KARP

Q. Why is it taking so long?

A. There were several very large entries -- it took a long time for JP Morgan to provide data, and then it has taken a very long time to piece apart the data. They had some issues providing details on a lot of the information that they provided in summary format.

And then it was very difficult for us to compare that information back to LBI's records. So we continue to work with them.

Q. We will take a look at it in a minute, but at some point you got a list of CUSIPs of the securities that went over to Barclays, correct?

A. Yes.

Q. And did you -- you may have answered this, but did you try to value those securities, did Deloitte independently try to value those securities?

A. We had sent a sample of those securities to our -- to our Deloitte's pricing center to use just publicly available pricing services like Bloomberg to see what type of

KARP

prices we might be able to get. We had a very low hit rate on getting prices, so we stopped.

Q. So you, to get a sense -- what was the reason to get a sense of whether the pricing -- how the pricing would compare to -- what was the reason for that effort?

MR. ROTHMAN: Let me caution the witness not to reveal any attorney/client communications.

But it -- I'll give you some leeway here, but can we have an agreement this won't be a waiver of any kind of privilege or protection?

MR. THOMAS: Yes, yes.

MR. ROTHMAN: OK. And we are talking about this line of questioning here?

MR. THOMAS: Yes. Nothing else comes to mind, but just let me do this.

Q. Let me ask it this way, just so I understand what was done. The CUSIPs for the securities -- you got a list of CUSIPs of securities that made up what was referred to as 42.3 billion, right? That was transferred to Barclays?

KARP

A. Yes.

Q. And you took a sample of those and tried to price them independently, but it proved too difficult to price and so you gave up on that effort? Is that correct?

A. We received a file from Barclays of what was transferred to them under the repo transaction. That file showed a different market value than what JP Morgan showed on their file.

We were asked by the trustee to see if -- which -- whether or not the -- which prices were more accurate. So we did a sample and sent it out for just publicly available pricing services. We did that, we got very -- we got a low hit rate on those prices, so a number of them came back as not being available through publicly available sources, and at that point, we were told not to move further into that.

Q. And you did no other further work in attempting to value the 42.3 billion or the securities that were marked by JP Morgan as 42.3 billion and marked as something else by

KARP

Barclays -- strike that.

You did nothing else to try to determine which valuations were more accurate in terms of market value?

A. The only other analysis that we performed was looking at the Barclays file, because we noted that the same CUSIP showed up more than once in the file sometimes and had two different prices. So we had notated that and asked Barclays the reasoning behind the two different prices.

That's the only other analysis that we did from a pricing perspective.

Q. Did they explain the reasoning behind it?

A. It was an error.

Q. Was it a significant portion of the -- I mean just a couple CUSIPs here and there or was it a significant --

A. It was more than a couple of CUSIPs. The total market value was, I believe, several hundred million on the total, 43 billion, 43.9 billion.

Q. Do you know if Barclays corrected it

KARP

after?

A. We did not receive a new file from them.

Q. I think you said Barclays had a different market value than JPM Morgan, but I think again, as we established earlier, you're not sure whether that 42.3 was something that JP Morgan actually considered a market value or whether it was something they considered a collateral value, hence they used that term in some of the documents we looked at?

A. My understanding from discussions with them, it was market value. I'm not sure of the difference in term when they refer to it as collateral value, that it is different than market value.

Q. Well, you recall that warning, caution not to assume that the collateral values associated with some of the Fed securities was really indicative of realizable value. Do you recall that?

MR. TECCE: Objection to form.

MR. HINE: Objection.

MR. ROTHMAN: Objection to form.

KARP

other?

A. I don't recall it being discussed one way or the other. I don't recall them saying anything that I had to worry about the value of those securities when I was doing this analysis.

Q. Well, when you did this analysis, did you have other e-mails back and forth with JPM Morgan or their counsel concerning their analysis, or did you just speak with them about this and then do the analysis?

A. We met with them several times about the analysis and showed it to them before we discussed it with the trustee.

Q. Do you have any idea where JP Morgan got their marks from, whether it was just on the books or in the records?

A. We didn't ask them.

Q. You have no idea how they came up with the 42.3 billion?

A. No.

Q. Do you have any knowledge as to whether Lehman was updating their books after they filed -- strike that.

Do you have any knowledge as to

KARP

A. Yes, but that was for the Annex A securities for the settlement that was being done in December.

Q. That was part of the Fed repo securities, and you have no reason -- I think as we established, there is no reason for you to believe that collateral values were any more reliable as market value indicators for that set of Fed repo securities than they were for the other set of Fed repo securities that were actually transferred to Barclays?

MR. TECCE: Objection to the form of the question.

MR. ROTHMAN: Objection to form.

A. As a tri-party custodian, it is JP Morgan's responsibility to make sure that the value is appropriate for the collateral it is receiving under a tri-party arrangement. So at the time when I did the analysis, I would not have a reason to expect that the 42.3 billion value was incorrect, and they not indicate that there was such an issue with the valuation of those securities.

Q. But it wasn't discussed one way or the

KARP

whether Lehman was updating their marks after September 12, 2008?

A. The books and records that we have seen show market values on a daily basis.

Q. From what date?

A. From their -- we have seen reports, not full reports, we have seen some reports that you can pull off their historical system that show market values. I don't know all the dates that we have looked at. But there were -- we have, in the reconciliation related to LBIE, we have been rolling forward from September 12, and the reports that we have seen there for some of those positions and the breaks we have been reconciling have market values on them.

Q. Do you know if they are being updated daily? Have you checked that?

A. I wouldn't know if they are being updated daily. My understanding from conversations with former LBI personnel is the records were running that week as normal and that they were able to prepare a customer reserve formula computation on the 19th, which would have required market values.

KARP

A. Yes.

Q. You're aware that Barclays placed some valuations on the securities -- you're aware that Barclays placed valuations on the securities that it received as part of the transaction, correct?

MR. ROTHMAN: Objection to the form.

And let me caution you, again, not to reveal information that you learned from attorneys only.

A. I have a file from Barclays which shows a market value of securities received under the repo transaction.

Q. Do you have any basis for disputing that value that they have put on it?

MR. ROTHMAN: Objection to the form.

A. We haven't done any work that would indicate -- we didn't value the securities. We attempted but we didn't -- we weren't able to value the securities. So I would not know whether or not the valuation is correct or not.

Q. And any efforts to actually look at the TMS system to see whether the marks were being updated after the bankruptcy filing until

KARP

a daily basis. We saw some update in certain other work we were doing, but we did not specifically look to see if marks were being updated daily.

Q. Is it fair to say that sitting here today, that you don't know whether marks were being updated daily, the LBI marks, between September 12th and September 19th?

A. We -- I don't know for sure.

Q. Let me ask you to turn back to the e-mail from JPM with the Appendix A attached to it, Exhibit 570.

In the attachment, there is a -- at the top, the different columns, on the right-hand column it, says, "Collateral Value."

A. Um-hm.

Q. And as I understand it, you don't -- do you have an understanding of what collateral value is vis-a-vis market value?

A. In this sense, it is supposed to mean market value, according to our discussions with JP Morgan.

Q. OK. If you turn back to the e-mail, in the second sentence, it says, "I understand

KARP

September 20 -- 19th was done at the direction of counsel?

A. Whose bankruptcy filing?

Q. LBHI's. In any event, September 12 -- any work you have done, Deloitte has done, to actually determine whether securities that either were associated with the original asset purchase agreement or the later purchase agreement as revised by the clarification letter --

MR. TECCE: Objection to form.

MR. HINE: Same here.

MR. THOMAS: I'm not done with my question.

MR. TECCE: Sorry.

Q. Any work that has been done by Deloitte to determine whether the marks for LBI's securities were actually being updated on a daily basis between September 12th and September 19th has been done at the direction of counsel; is that correct?

MR. ROTHMAN: Objection to the form.

A. I wouldn't say that we have done any work to verify that marks were being updated on

KARP

that these collateral values were furnished principally by third-party pricing sources, and we caution against using those values as reliable indicators of realizable value."

Don't you understand realizable value to be a reference to market value?

MR. ROTHMAN: Objection to the form.

A. My understanding of realizable value, based upon my experience, is if I sold it today, is that the value I would get. That's not necessarily the last market price the securities sold in the marketplace, which was my understanding of these prices, was the market price as of the 17th of September, based upon this e-mail.

Q. Do you understand that a lot of the securities that were conveyed to Barclays were not very liquid?

A. I understand that people have said that.

Q. Do you understand that it may not -- some of those securities may not have actually sold in a long time?

A. I don't know that for sure.

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sources. If there were other avenues to explore, we did not do that.

I don't know what avenues JP Morgan took to try to value anything.

Q. Well, you did try to explore. You took a sample and tried to value them and decided it was --

A. Only publicly available pricing services.

Q. So you're saying you didn't dig deeper, trying to value them using nonpublicly available sources?

A. Correct.

Q. Do you disagree with JPM's assessment that some are difficult to value?

MR. ROTHMAN: Objection to the form.

A. I don't know whether or not they are difficult to value. We only did a sample on a limited view.

Q. Do you see in the second paragraph, it says, "Please note the collateral value was obtained from third-party pricing sources, and JPM Morgan cautions that collateral value may not be a reliable indicator of realizable

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value"? Do you see that language?

A. Yes.

Q. So JPM is again cautioning against using the collateral value as a reliable indicator of realizable value, correct?

A. That's what it says.

Q. I am going to go ahead and mark a document as Exhibit 572.

(Exhibit 572, subpoena marked for identification, as of this date.)

Q. Let me ask you, have you seen this document before?

A. Yes.

Q. And what is it?

A. It's a request, it is a subpoena request for a deposition.

Q. And on page 9, you see a list of examination topics?

Do you see that list?

A. Yes.

Q. And you understand you are the witness on these topics for Deloitte?

A. Yes.

Q. And can you describe briefly what you

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did to prepare for your deposition today?

A. I met several times with Hughes Hubbard.

Q. Anything other than that?

A. I read through some documents that they had showed me.

Q. Did you speak with anyone else other than Hughes Hubbard?

A. I spoke to some of my partners that would have made -- that may have had answers to some of these comments -- some of these topics.

Q. And who were those people that you spoke to?

A. Felicia Sokalski, John Manley and Chris Harris.

Q. And did they provide you with any useful information on these topics?

A. They, John and Felicia were the people that were in -- on the ground in the beginning, so for topic 11, they had the most information.

Q. And what is your understanding, Deloitte's understanding of when a SIPC liquidation of LBI was first considered, anticipated or planned?

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A. On September 15th or 16th, John received a call from -- John Manley received a call from SIPC saying that there was a possibility that Lehman Brothers, Inc. was going into liquidation. And they wanted to know whether or not Deloitte would be able to clear conflicts and had the people available to assist if necessary.

Q. Looking at topic 2, and -- which is your analysis, reconciliation, evaluation of each of the acquired financial assets, and those assets are defined in the document to include a number of items. I just want to ask you about some of them.

The -- I think we have discussed the -- any efforts to value the repo collateral, correct?

A. Yes.

Q. Is there -- was there any efforts to value the repo collateral that we haven't already discussed?

A. No.

Q. In terms of the clearance box assets, has -- do you know what I am referring to when I

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<p>1 KARP</p> <p>2 say clearance box assets?</p> <p>3 A. My understanding is that that's the</p> <p>4 boxes at -- the box at DTC.</p> <p>5 Q. And is it your understanding those</p> <p>6 assets were being conveyed to Barclays?</p> <p>7 MR. ROTHMAN: Objection to the form,</p> <p>8 and I caution you not to reveal any</p> <p>9 information that you have learned solely</p> <p>10 from counsel.</p> <p>11 A. My understanding from some of the</p> <p>12 Barclays personnel is that these -- that they</p> <p>13 believe these assets should be transferred to</p> <p>14 them.</p> <p>15 Q. And have you attempted, has Deloitte</p> <p>16 done any valuations of those assets?</p> <p>17 MR. ROTHMAN: You can answer that one</p> <p>18 yes or no, but --</p> <p>19 A. Deloitte has not done -- no.</p> <p>20 Q. Has Deloitte assisted in the</p> <p>21 evaluation of those assets?</p> <p>22 MR. ROTHMAN: Objection to the form.</p> <p>23 A. No.</p> <p>24 Q. I'm hearing long pauses, so I just --</p> <p>25 let me ask you, what is it that you are thinking</p>	<p>1 KARP</p> <p>2 about, you are distinguishing?</p> <p>3 A. Well, those assets would have been</p> <p>4 part of the balance sheet.</p> <p>5 Q. OK.</p> <p>6 A. So they would have been valued for the</p> <p>7 balance sheet of 9/19. It would have included</p> <p>8 that pool.</p> <p>9 Q. Is the balance sheet -- when do you</p> <p>10 expect to complete the balance sheet for 9/19?</p> <p>11 A. I'm not sure.</p> <p>12 Q. Is it complete with respect to items</p> <p>13 such as the clearance box assets?</p> <p>14 A. It's being reviewed at this time by</p> <p>15 the trustee and his counsel --</p> <p>16 MR. ROTHMAN: No, don't talk about</p> <p>17 things that the lawyers are doing, please.</p> <p>18 Q. It is OK to just indicate that it is</p> <p>19 not in your bailiwick. It is being reviewed I</p> <p>20 think is OK to say. Otherwise, it is hard to</p> <p>21 figure out the story of why.</p> <p>22 OK, just let me talk about any</p> <p>23 valuations you have placed on the clearance box</p> <p>24 assets. Has Deloitte placed, assigned a value</p> <p>25 to the clearance box assets?</p>
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<p>1 KARP</p> <p>2 A. Deloitte has not done valuation.</p> <p>3 Q. The valuation that's on the draft</p> <p>4 balance sheet, do you know how it was obtained?</p> <p>5 A. They would have been through</p> <p>6 third-party pricing sources and Barclays.</p> <p>7 Q. The third-party pricing sources, did</p> <p>8 Deloitte go out and make use of third-party</p> <p>9 pricing sources?</p> <p>10 A. No. Those sources would have come</p> <p>11 through Barclays and existing Lehman Brothers</p> <p>12 relationships that continued past bankruptcy.</p> <p>13 Q. Can you be a little bit more specific</p> <p>14 on the last part?</p> <p>15 A. We still have a relationship with</p> <p>16 Bloomberg to obtain some pricing information.</p> <p>17 Q. "We" being LBI, the trustee?</p> <p>18 A. LBI, the estate.</p> <p>19 Q. Do you know the amounts that are on</p> <p>20 the draft balance sheet for clearance box</p> <p>21 assets?</p> <p>22 MR. ROTHMAN: Objection to the form.</p> <p>23 A. There is no specific amount for</p> <p>24 clearance box assets. It's listed as firm</p> <p>25 inventory.</p>	<p>1 KARP</p> <p>2 Q. And do you know what that adds up to?</p> <p>3 A. There are still open questions on</p> <p>4 those numbers, as we are still waiting for</p> <p>5 information from JP Morgan and DTC. So those</p> <p>6 numbers are not finalized.</p> <p>7 Q. What information are you waiting for</p> <p>8 from JP Morgan and DTC?</p> <p>9 A. JP Morgan, there are some open</p> <p>10 questions on the unwinding of some transactions</p> <p>11 that happened that week, the 18th and 19th.</p> <p>12 Some journal -- some entries that hit the bank</p> <p>13 accounts that affect security settlements that</p> <p>14 we are waiting for details on.</p> <p>15 And for DTC, we are still waiting for</p> <p>16 the -- some information on some of the</p> <p>17 securities' movements and settlements that they</p> <p>18 did through their various clearing</p> <p>19 organizations.</p> <p>20 Q. Accepting that there is maybe some</p> <p>21 margin of error here because of those unknown</p> <p>22 elements, do you know the rough range of order</p> <p>23 of magnitude of the clearance box assets?</p> <p>24 MR. ROTHMAN: Objection to the form.</p> <p>25 Calls for speculation.</p>

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MR. ROTHMAN: Objection to the form.

A. I don't know who approved it.

Q. Do you understand whether it required approval?

A. No.

Q. So you just don't know any of the facts -- you knew it was transferred but you don't know any of the facts surrounding who approved it and so forth?

A. Who -- no.

Q. When did Deloitte first learn that proceeds of certain government securities held by JPM as margin in its OCC accounts were released to Barclays?

A. They were not released to Barclays.

Q. And why do you say that?

A. Because they are still held in an account at JP Morgan.

Q. So you're not aware of any proceeds of any government securities held at one point by JPM as margin for the OCC accounts being released to Barclays?

A. Could you explain what you mean by "proceeds"?

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Q. Well, money.

A. There was -- if I remember correctly, there was a -- one of the securities matured and I believe that cash may have been transferred to Barclays. I believe -- I believe that that's what happened.

Q. Do you understand roughly when that happened?

A. I think it happened around the same time that the cash moved, but I don't -- I'm not sure when it actually happened.

Q. Would you have been aware roughly at the time it happened?

A. I don't believe so. I wasn't really involved in cash at that point, you know, in the early days of the -- of our role.

Q. Do you know when Deloitte was aware of that release?

A. We would have known -- we would have known a couple days later for the people that were reconciling cash because it would have shown up as a cash movement. But otherwise, I don't know the exact date.

Q. Do you know if Deloitte had any

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involvement in the release of those funds, those proceedings?

A. No.

Q. Is Deloitte aware that LBI had collateral and accounts with other domestic and foreign exchange brokers of clearing houses to support its business as a futures commission merchant?

MR. ROTHMAN: Objection to the form.

A. Yes.

Q. Are you aware of any discussions with Barclays prior to the closing concerning how the transfer of this business was to be implemented?

A. No.

Q. Even today, you're not aware of any such discussions?

A. No.

Q. Is Deloitte aware that collateral held in these accounts had been transferred to Barclays, either by transferring the accounts or by transferring the collateral?

MR. ROTHMAN: Objection to the form, and again, let me caution you not to reveal things that you have learned solely from the

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lawyers.

A. From some of the statements we have received from the exchanges, we understand from those documents that some collateral has moved to Barclays.

Q. When did you understand that?

A. I'm not sure when we first started getting statements. It took a long time to get information from the CME. I believe it was sometime in '09, not before then.

Q. Can you estimate a month?

A. I really -- I really don't remember.

Q. It would have been statements from the CME -- what statements would have alerted you to that?

A. We asked for statements from the CME showing the positions and any margin so that on those statements, we would have seen if any funds had been transferred out.

Q. If there comes a point that I am asking you a fact that you think only came from your lawyer and you're not sure, if you would let us know so we can discuss whether that's -- so you can discuss that first with your

1
2 UNITED STATES BANKRUPTCY COURT
3 SOUTHERN DISTRICT OF NEW YORK

4 -----x
In Re: Chapter 11
5 LEHMAN BROTHERS Case No. 08-13555 (JMP)
HOLDINGS, INC., et al., (Jointly Administered)
6 -----)

7
8 * * * HIGHLY CONFIDENTIAL * * *

9 DEPOSITION OF MIKE KEEGAN

10 New York, New York

11 Friday, August 28, 2009
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20 Reported by:

FRANCIS X. FREDERICK, CSR, RPR, RMR

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2 Quinn, Emanuel, Urquhart, Oliver &
3 Hedges for the Official Committee of
4 Unsecured Committee.

5 MR. LAYDEN: Good morning. David
6 Layden from Jenner & Block for the
7 Examiner.

8 BY MR. TAMBE:

9 **Q. Mr. Keegan, by whom are you**
10 **employed currently?**

11 A. Barclays Bank, PLC.

12 **Q. And how long have you been**
13 **employed by Barclays Bank, PLC?**

14 A. I've been an employee of Barclays
15 since July of 1996. But during that time
16 period, because of overseas assignments and
17 things like that, I've been employed by a
18 number of various entities within Barclays.

19 **Q. Starting in July of 1996 to the**
20 **present, if you could just give us a broad**
21 **overview of what your positions have been and**
22 **what your duties have been at Barclays.**

23 A. Sure. In July of '96 I actually
24 joined BZW which was the investment bank
25 subsidiary of Barclays Bank located in London.

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2 I joined in London as a chief operating
3 officer of the markets division of BZW
4 reporting to Bob Diamond.

5 I did that job for two years until
6 the formation of Barclays Capital in January
7 of 1997 -- sorry. January of 1999. And I was
8 the C -- sorry. It was January of '97. Sorry
9 about that. So it was 18 months as COO. Then
10 I was -- became the first CFO of Barclays
11 Capital when Barclays Capital was formed. I
12 did that job until November of 1999 and then I
13 returned to New York at that point in time as
14 the chief administrative officer for the
15 Barclays Capital operations in the US. I did
16 that until 2001 when I became the chief
17 operating officer for Barclays Capital's
18 credit trading and investment banking
19 businesses. And that was the position I had
20 until I guess November '07. And at that point
21 became head of principal credit trading which
22 is the job I currently have.

23 **Q. Just focusing on your current job**
24 **and your prior job, so starting in 2001**
25 **through the present, starting sometime in 2001**

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2 **it sounds like you were head of credit**
3 **trading?**

4 A. No. Chief operating officer which
5 in Barclays Capital it's different things to
6 different people. All right? So I worked for
7 an individual named Grant Kavalheim.

8 **Q. How do you spell that last name?**

9 A. It's K-A-V-A-H -- let me write it
10 out.

11 MR. STERN: We can look it up.

12 **Q. Grant was the first name?**

13 A. Yeah. Grant.

14 **Q. All right.**

15 A. K-A-V-A-L-H-E-I-M.

16 **Q. Okay.**

17 A. So Grant was head of trading and
18 investment banking. I was his COO and as his
19 COO, yeah, I had a bunch of different duties
20 in charge of planning, budgeting, execution of
21 any strategic plans that we wanted to
22 implement. I took on responsibility for
23 managing a number of businesses for him which
24 included our -- initially a business called
25 risk finance which was a credit arbitrage

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2 trading business. Then I took on
3 responsibilities for managing our loan
4 portfolio which is the portions of the loans
5 that we would make to clients that we would
6 retain on our balance sheet, managing that.
7 Took on responsibility for our distressed
8 proprietary trading business. And, finally,
9 more recently, our real estate business.

10 **Q. And if I understand the change in**
11 **the nature of your duties starting in November**
12 **2007, you specified that date as the date at**
13 **which you became head of prime credit trading?**

14 A. No. Principle credit trading.

15 **Q. Principle.**

16 A. So Grant departed the firm. All
17 of the trading businesses rolled up to Jerry
18 del Missier. Jerry del Missier had another
19 individual by the name of Justin Bull who was
20 his chief operating officer. So basically my
21 chief operating officer duties for credit went
22 away and I was left with what was my trading
23 and risk management supervisory
24 responsibilities.

25 **Q. Okay.**

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A. And I was renamed as head of principle credit trading.

Q. So starting with November 2007 through to the present if you could describe who you directly reported to.

A. November 2000?

Q. Seven.

A. Seven?

Q. Yeah.

A. As of November 2007 until today I directly report to Jerry del Missier.

Q. And who are the folks who directly report to you, if any?

A. Today it's Fred Orlan. It is an individual named Rene Canezen. It's an individual named Matt Barrett. An individual named Haejin Baek. And I'm pretty sure that's -- I'm trying to think. That's it right now the way we're organized.

Q. Okay. When we were earlier talking about some of the work you did when you were working with Grant you'd mentioned managing loan portfolios, distressed proprietary trading, et cetera.

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Do you still do all those -- manage all those types of trading?

A. Yes.

Q. So that's included within principle credit trading.

A. Yeah. What principle credit is is any risk that we are taking as a firm in the credit space in a non-market-making capacity is supposed to roll up into principle credit. It doesn't but...

Q. Other than the duties you have with respect to the principle credit trading business in the past twelve months have you been involved in any strategic initiatives by -- taken on behalf of Barclays?

A. I was involved in the Lehman acquisition, yes.

Q. And other than the Lehman acquisition, have you been involved in any other strategic initiatives, acquisitions, dispositions, things of that nature?

A. Nothing major.

Q. Broad terms, if you could just describe your involvement in the Lehman

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transaction.

MR. STERN: Jay, if it helps, I have a September 2008 monthly calendar, you know, just to keep the days of the week in mind. I just put that up here in front of Mr. Keegan.

MR. TAMBE: That's perfectly fine.

A. So my role I guess began Friday the 12th. And was one of the people who was brought in to examine portions of Lehman's balance sheet and operations in preparation for a bid to buy Lehman Brothers from what looked like it was going to be the -- in fact, the government at that point in time.

Q. And over the course of that next week, starting on the 12th going forward say ten days until the 22nd of September, if you could give us a little bit more detail in terms of what tasks you were doing in connection with the Lehman transaction.

A. Sure. I had responsibility specifically for looking at the commercial real estate portfolio, their loan portfolios, their private equity investments, and their

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corporate credit/debt positions.

And, you know, that process took basically, you know, the weekend through -- I don't know -- 3:00 or 4:00 on Sunday when it was determined that the trade wasn't going to happen.

Q. After that Sunday -- the Sunday you're referring to is the 14th of September, correct?

A. I believe it was, yes.

Q. After Sunday, the 14th, did you have any further involvement?

A. Yes, I did.

Q. Okay.

A. On Monday, the 15th, somewhere around 10, 10:30, 11:00 I got a phone call to show up to the conference room at Lehman Brothers' offices on the 32nd floor and to await instruction.

Q. And did some instructions arrive?

A. They did. I believe it was -- I'm not sure if it was actually but I believe it was Richard came in and told us that we had an opportunity to buy the US operations of Lehman

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2 Brothers I guess prior to bankruptcy
3 because -- at least with respect to the
4 broker/dealer. The broker/dealer was not
5 filed on that Monday morning.

6 Q. And so after you were told about
7 that opportunity what involvement did you have
8 in those efforts to purchase Lehman's
9 operations?

10 A. So I was asked to take a look at,
11 you know, the potential assets that we were
12 buying within the categories that I explained
13 to you before. And it did not include any
14 commercial real estate because our board told
15 us we weren't eligible to take over any
16 commercial real estate. It did not include
17 any private equity investments because during
18 the work we did over the weekend we determined
19 that the private equity investments were not
20 something that we wanted to take.

21 It did not include any of the loan
22 portfolios, should not have included any of
23 the loan portfolios, because that was another
24 asset category we determined we did not want
25 to take.

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2 broker/dealer?

3 A. Over the weekend we were. And
4 then on Monday I'm not sure that we were given
5 a complete list again but we were shown -- it
6 was indicated what was on the books of the
7 broker/dealer and I guess we had a list
8 because I had determined whether we looked at
9 it or not -- or didn't look at it over the
10 weekend. That was the first step. You know,
11 had we seen it before. We should have.

12 And then for particular areas
13 where we identified over the weekend as being
14 problematic with respect to value or other
15 concerns, yes, we were given a CUSIP -- we
16 asked for and were given a CUSIP list.

17 So Lehman obviously hadn't planned
18 on going bankrupt and they were totally
19 unprepared for the whole process on Monday so
20 it was a struggle to get any information quite
21 frankly.

22 Q. And throughout that week, the week
23 of the 15th of September, was the focus of
24 your efforts limited to analyzing the
25 corporate debt securities aspect of the

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2 So it basically came down to,
3 within my world, what I looked at, was the
4 corporate debt securities that were on the
5 books of the broker/dealer for the most part.

6 Q. And just to be clear on what you
7 mean by corporate debt securities, what do you
8 mean by that?

9 A. Commercial paper, bonds, credit
10 link notes. Any other, you know, security
11 instruments that they might have housed in
12 broker/dealer that, you know, involved
13 corporate credit risk.

14 Q. And for this asset class,
15 corporate debt securities, would you typically
16 be provided with a list of CUSIP numbers,
17 identifiers for the securities that were held
18 by the broker/dealer?

19 MR. STERN: I'm just going to
20 object to the form. Are you asking him
21 if he was? It says would you typically
22 have been.

23 Q. That's fine. I could restate the
24 question. Are you provided with CUSIP numbers
25 out of the debt securities held by the

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2 portfolio or did you do other things as well?

3 A. It was primarily that. I also was
4 more or less coordinating the communication
5 internally between other individuals that had
6 responsibility for various parts of the
7 portfolio -- of Lehman's portfolio and
8 analyzing it. And our team just -- and
9 that's -- no one said, Mike, you're -- you
10 know, you're in charge. Just that I'm more
11 senior than the other guys. So I know -- I
12 know Rich. I know Archie Cox. People like
13 that.

14 I worked on the -- securing -- we
15 were going to make a DIP loan to Lehman for
16 the week and looking at the collateral
17 associated with the DIP loan and how much --
18 what collateral might be available for the DIP
19 loan and how much we might be willing to
20 provide. That was principally it.

21 Q. And the loan that you're referring
22 to as the DIP loan was that, in fact, extended
23 by Barclays to Lehman?

24 A. It was.

25 Q. And in what amount?

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A. I think it was \$500 million. I'm not positive what credit finance determined. The collateral was Newburger Berman property.

Q. And just to be clear, this DIP loan is different than the tri-party repo or any other repo --

A. Absolutely, yeah.

Q. You said you were -- you played a coordinating role to some extent during that week. You mentioned two names. I believe you mentioned Rich Ricci. I think you mentioned Rich but that was Rich Ricci?

A. That's Rich Ricci, yes.

Q. And Archie Cox, right?

A. Yes.

Q. Who else were you coordinating with during that week?

A. Jonathan Hughes, our legal counsel. A few conversations with Patrick Clackson.

Q. And who is Mr. Clackson?

A. He's the chief financial officer of Barclays.

Q. Were you involved at all in

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negotiating --

MR. STERN: Excuse me. Excuse me. I don't know if you -- if you completed your answer.

King.

THE WITNESS: Oh, the guys I was coordinating with. Sorry. I thought you were looking upward, not downward.

MR. STERN: It's a gen -- just to clarify, it's a general question about all the people he was coordinating with. Not just the more senior people.

MR. TAMBE: That's fine.

Q. Let's go through the list of everyone you were coordinating with. You got to Mr. Clackson. Mr. King.

A. Right. So Stephen King was responsible for looking at all of the ABS and mortgage -- residential mortgage assets with Lehman Brothers. Similar role to what I had on the credit side. John Mahon took that responsibility for, I guess you would call them the rates, assets, government bonds principally. Anything that they might have

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done with repo would have rolled up to him. The exposures, if any, on derivative contracts.

Q. Anyone else in this coordination circle that you --

A. That was pretty much it. There was other people that -- like I said, I was not in the coordination but I was working with our guys in credit on the DIP loan. A guy named Mark Manski and Ian Prior on that. I had conversations with James Walker. James was controller of the US. Another lawyer named Jason White. Jason was working on the DIP loan. And Gerard LaRocco I guess as well. And Gerard was working on putting a repo facility in place.

Q. Anyone else?

A. Not that I -- not that I remember. I'm not saying there wasn't. I just don't remember.

Q. Were you part of the group of people from Barclays that was negotiating the terms of the transaction with the folks from Lehman?

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A. I wouldn't say I was negotiating the terms of the transaction but I was involved in -- you know, I was also involved on Thursday.

Q. And you say you were also involved on Thursday. What do you mean by that?

A. So we struck a deal on Monday in effect as to what we were going to buy. And then -- you know, so I worked from, you know, at Lehman from whatever time, 10:30 in the morning, 10:00 to roughly 2:30, 3:00 in the morning, Tuesday morning. Went and got some sleep. Tuesday was more worried about other things in our world than I was worried about anything in Lehman's world whose world was melting down. And more focused on that Tuesday and Wednesday.

And then Thursday afternoon I got called in around 4:00 to come over again to Lehman by Rich to start taking a look at the inventories that were coming in related to, you know, an effective settlement of the asset purchase to make sure we were getting, you know, what we bought and everything we bought.

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2 And Stephen was there as well and
3 John was back in UK at that point in time.

4 Q. And the Stephen you're referring
5 to is Stephen King.

6 A. Yes.

7 Q. And the John you were referring to
8 is who?

9 A. John Mahon.

10 Q. Have you ever seen a copy of the
11 Asset Purchase Agreement between Lehman and
12 Barclays?

13 A. Only in preparation for this.
14 Prior to that, no.

15 Q. So it's fair to say the first time
16 you ever laid eyes on the Asset Purchase
17 Agreement was sometime in the past couple
18 weeks.

19 A. Yeah. I saw a version of the
20 agreement early on. I was asked a specific
21 question which escapes me now why I was given
22 the agreement. But it was very -- it was
23 specific to, you know, is this worded
24 properly, yes or no. And I just don't
25 remember what it was.

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2 MR. STERN: Well, since it may
3 have been with a lawyer I think I'll
4 instruct you not to answer because it
5 may have been a privileged conversation.

6 THE WITNESS: Okay.

7 A. I don't know then.

8 MR. STERN: If you remember what
9 provision you discussed I think that's
10 fine.

11 A. No, I don't. If you put some
12 documents in front of me I might remember but
13 right now I don't remember.

14 Q. There's a document that's been
15 referred to as the clarification letter. Does
16 that term have any meaning to you?

17 A. I'm not sure what that is.

18 Q. Okay. Did you have any
19 understanding that there were features of the
20 transaction that changed over the course of
21 that week, the week of the 15th?

22 A. Oh, yeah. Yes, I did.

23 Q. And what's your understanding of
24 the features of the deal that changed over the
25 course of that week?

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2 Q. And you say it was early on.
3 Would you put it during that week of the 15th?

4 A. Yeah. During the week prior to
5 Thursday, I believe.

6 Q. And the provision you were shown,
7 were you shown that provision in the signed
8 APA or an APA that was being drafted?

9 A. I think it was a draft.

10 Q. And who showed you that provision?

11 A. I think it was the legal
12 department. It may have been the finance
13 department. I don't remember.

14 Q. You don't down remember the
15 substance of the discussion.

16 A. The substance was --

17 MR. STERN: If it was a discussion
18 with legal, don't talk about the
19 substance.

20 THE WITNESS: I don't remember who
21 it was with.

22 Q. Okay. So what was the substance
23 of the discussion?

24 MR. TAMBE: He doesn't know if it
25 was with a lawyer.

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2 A. All right. So Monday night when I
3 left we had come to a conclusion as to what we
4 would buy and what we wouldn't buy. There
5 were assets -- you know, we did have problems
6 with the valuations with a number of the
7 assets that Lehman had on the books. And
8 overall our conclusion from the weekend was
9 that Lehman was aggressive with the rest of
10 the valuations. And, you know, we went back
11 to them on Monday and told them that, you
12 know, we didn't agree with certain prices. We
13 also went back to them with the knowledge that
14 the market was melting down and that that deal
15 wasn't closing until the end of the week,
16 saying that, you know, we need to put a
17 haircut on these assets because the volume of
18 the assets plus the timing -- you know, we're
19 trying to predict what the assets of are going
20 to be worth on Thursday, Friday when the deal
21 closes. We know Lehman's employees have all
22 lost their jobs in effect as of right now and
23 they're not too focused on marketing the
24 inventory, et cetera.

25 So we had proposed some haircuts

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to them. It was assets that we thought were materially -- you know, relative to those assets themselves, materially mismarked and we went back to Lehman on those and told them where we thought the valuation of those assets were. Some of those we agreed. Some of those weren't agreed. And we told them to keep the assets.

I've lost my focus on the question. Could you just repeat the question?

Q. The question was about what the features of the deal that changed over the course of the week.

A. Okay. So that was the deal. So we basically came to a definitive list of what we said we would purchase in effect.

Q. I just want to drill down a little bit on a couple of things you said.

MR. STERN: Just for clarification, we've talked about the status as of Monday and then you're going to clarify that and then you'll go to the changes.

MR. TAMBE: Yeah.

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MR. STERN: Okay. That's fine.

Q. You had some concerns about the valuations of the assets on Monday, correct? Lehman's valuations.

A. Yeah.

Q. And you went back to them and proposed haircuts on these assets.

A. Well, we proposed valuation adjustments and haircuts, yes.

Q. Do I gather from your answer that on some of the haircuts or valuation adjustments you proposed you reached agreement with Lehman?

A. On some of them, yeah.

Q. And others you didn't?

A. No. Other's they just thought we were nuts.

Q. On the ones where you reached an agreement with Lehman as to the haircut or the valuation adjustment, were those included then in the list of assets that Barclays would be purchasing?

A. Yes.

Q. And the ones that you did not

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reach an agreement with Lehman on on valuation were those excluded from the list of assets?

A. That's correct.

MR. STERN: Let me just pause. I'm sorry. For the reporter. There's a question "And others you didn't." What do you have as the answer?

(Discussion held off the record.)

BY MR. TAMBE:

Q. In round numbers, for the valuation adjustments or haircuts where you did reach an agreement --

A. I don't know.

Q. \$5 billion?

A. No idea.

Q. Have you ever heard about a \$5 billion adjustment or mark-down in the book value of Lehman's assets around that period of time?

A. No. Again, only in preparation for this deposition. But not otherwise.

Q. When you said you proposed haircuts or valuation adjustments to Lehman on Monday, was there a document that had

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asset-by-asset proposed mark-downs?

A. Yeah. There was a period -- there was an asset -- there was asset-by-asset where we thought we had problems with valuations. But then there was also a summary where we just said that, you know, we're talking so much -- you know, we're taking on so much inventory, the market is melting down, you aren't getting your hands on it till Thursday. You know, what do you need to protect yourself between now and Thursday or Friday. So we can manage the assets if the deal closes, right?

So that was the Monday night process. And I have no idea what the number actually added up to. We weren't targeting a number or anything like that. We were just saying based on this type of asset, based on what's going on in the market, how much protection do you think you need between then.

Q. Just to get a better understanding of your proposal that Barclays made, was it by asset category or was it even more granular, particular asset by asset?

MR. STERN: Objection to the form.

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Q. Do you understand my question?

A. Ask it again. Or repeat it.

Q. The question I'm asking --

MR. STERN: I'm objecting to the proposal term.

MR. TAMBE: That's fine.

Q. You proposed some haircuts or valuation adjustments, right?

A. Yeah. By category we said we think we need --

Q. When I use the word proposal that's what I'm talking about, okay?

A. Okay.

Q. That proposal. Was it by asset category or by specific asset?

A. If we had a valuation adjustment it was by asset. And if we had a haircut it was by category.

Q. Do you recall any of the category type haircuts that you proposed?

A. The actual amount?

Q. Yeah.

A. No, I don't. Off the top of my head I don't know. I'd have to look at the

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documents.

Q. But you believe there's a document or documents from Monday which would contain that information.

A. There was a Monday -- there was a document that contained that information on the Monday, okay? That deal didn't happen so I have no idea if that still exists or doesn't exist.

Q. All right. We got down this discussion talking about how the deal changed or how features of the deal changed during that week. That deal that was being discussed on Monday, did that deal get done?

A. So the deal on Monday, okay, in the context of the bigger deal, I guess yes, it got down. But in the context of what I was looking at, which was the purchase of the inventory, that aspect of the deal didn't get done, okay?

When I showed up on Thursday night there was a -- I got there around 4:00. Somewhere around there. And I expected to take a look at, you know, the settlement list

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of what inventory we got and then just do a simple comparison back to what we bought Monday and say, Yeah, it's the same list. It wasn't the same list. And, in fact, there was a huge delay in us getting anything back, you know. We had wired out through JPMorgan money and they were supposed to deliver us securities and were having difficulties delivering us securities for some reason. So there was a long delay. Several hours.

And my recollection is around 8:00 at night, you know, we started getting stuff in and looking at it. We might have started getting it a little bit earlier, around 7, but we started looking at it.

But about 8:00 at night on Thursday night we noticed that this wasn't the inventory that we had agreed to purchase on Monday. It was different. And it included a lot of the inventory that we thought was overvalued. At least the initial deliveries were a lot of what we thought was overvalued in the mortgages area, mortgage agencies, that we said we couldn't come to an agreement with

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Lehman on valuation and we were leaving behind.

So it was at that point I learned for the first time that the agreement had changed and apparently sometime on Tuesday the Federal Reserve came in to us and said -- you know, it's been relayed to me by third parties, I have no idea what they actually said -- but, in effect, what I've been told, if you guys want the deal to go through you need to take us out of our repo. And so the construct of the deal changed from a purchase of inventory to taking an assignment of repo.

Q. And who described that change in the nature of the deal to you?

A. Could have been Ian Lowitt from the Lehman side. It could have been Rich. It could have been Jonathan Hughes. It could have been -- I don't know. I mean, I was kind of stunned when I heard it. But I don't remember exactly who told me that.

I do know what I did after that is I had a conversation with Ian Lowitt, and said, "Ian, we're getting stuff we didn't

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2 want. You need to take it back and give us
3 the stuff we bought."

4 And he explained that he couldn't
5 do that because even though they hadn't filed
6 bankruptcy, the counterparties to the repo for
7 the securities company were grabbing
8 collateral and liquidating it on them. And
9 they didn't have the inventory we bought
10 anymore. They only had what was in repo at
11 the Fed.

12 **Q. Did you have any discussions with**
13 **Ian Lowitt or others about finding additional**
14 **inventory beyond the inventory that had been**
15 **identified on Monday?**

16 A. Yeah. Because we had value -- we
17 were getting, for instance, these mortgage
18 securities, agency mortgage securities. I
19 think the number, and I don't recall, Stephen
20 would know the exact number, but I think we
21 thought the adjustment should be as much as a
22 billion eight of new securities. And Lehman
23 did not agree with us. So those securities
24 were to be left behind. And then all of a
25 sudden they show up in our box. Our

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2 inventory. And so we knew they were marked
3 wrong. Or we believed they were marked wrong.

4 And, therefore, we were, you know,
5 short cushion or haircut, if you will, on the
6 repo. And, you know, that was a concern to us
7 because we had -- on Monday in effect
8 negotiated, you know, what we thought was a
9 cushion to protect us, and -- similar to a
10 haircut on repo. And on Thursday night we
11 were finding out that the actual repo haircuts
12 were in effect getting absorbed by the mismatch
13 of Lehman securities.

14 So, yeah, we needed additional
15 collateral to protect us.

16 **Q. And did you have in mind a number**
17 **or target amount of that additional**
18 **collateral?**

19 A. I did not. I just -- I didn't --
20 I didn't -- you know, we didn't -- we knew,
21 for instance, the billion eight, but we didn't
22 know what else we got. And we were struggling
23 all night long to find out what we were
24 actually getting in terms of inventory,
25 because it came in dribs and drabs through the

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2 evening because of what we believed was
3 operational errors that JPMorgan made.

4 MR. STERN: Let me just pause for
5 one minute.

6 (Discussion held off the record.)

7 BY MR. TAMBE:

8 **Q. Did you discuss with anyone a**
9 **target number for the additional collateral**
10 **that Barclays was looking for after the**
11 **Thursday night transfer?**

12 A. No. I did not discuss a specific
13 number.

14 **Q. Did you discuss a range?**

15 A. No. What we were asked was -- the
16 question we were asked was how much your
17 haircut -- so -- we gave a number -- you know,
18 an amount of money to the Fed, in essence,
19 which was I think gross somewhere in the \$45
20 million area. Okay? The Fed delivered the
21 securities that went through JPMorgan. I have
22 no idea if what we got was what came out of
23 the Fed and went to JPMorgan or how JPMorgan
24 determined what we got. All right? But we
25 got stuff from JPMorgan.

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2 We were trying to find out all
3 Thursday night, all Friday morning, what
4 securities we got, were getting, were likely
5 to get, what Lehman thought the value of those
6 securities were. Right? So we could know, we
7 could understand what the magnitude of the
8 repo haircut that we received was.

9 And Lehman wasn't able to provide
10 us that information. JPMorgan wasn't able to
11 provide us that information. And, you know,
12 we had some general idea but not specific idea
13 of what the haircut cushion was. And the
14 question we were being asked was I guess the
15 way the deal was structured initially there
16 was some liabilities we're assuming as well,
17 is there enough cushion to pay for those
18 liabilities. And we couldn't answer that
19 question.

20 **Q. Was it a feature of the**
21 **transaction as you understood it that the**
22 **cushion you had negotiated on Monday would be**
23 **sufficient to pay for the liabilities you were**
24 **assuming?**

25 A. No. Not on Monday night, no. I

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2 had nothing to do -- I had no idea that there
3 were liabilities that we were assuming.

4 **Q. On Thursday was there a discussion**
5 **about ensuring that there would be enough of a**
6 **cushion to cover the liabilities that Barclays**
7 **was assuming?**

8 MR. STERN: Objection to the form.

9 A. Read the question.

10 (Record read.)

11 A. No, there was not a specific
12 discussion that there was enough cushion for
13 the liabilities that we were assuming.

14 **Q. Was there a discussion of the size**
15 **of the cushion versus the amount of the**
16 **liabilities on Thursday night?**

17 A. Not versus the liability. I had
18 no idea what the liabilities were, okay? So I
19 did not have a view of that side of the
20 transaction.

21 MR. STERN: When you're asking was
22 there a discussion, Jay, are you asking
23 a discussion that he participated in or
24 are you asking about if he knows about
25 other discussions?

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2 MR. TAMBE: Either way.

3 MR. STERN: Because it's
4 misleading the way you're asking it.

5 MR. TAMBE: So you have an
6 objection to form?

7 MR. STERN: I'm just trying to
8 clarify what you mean when you asked was
9 there a discussion.

10 BY MR. TAMBE:

11 **Q. Were you involved in any such**
12 **discussions, sir?**

13 A. I was told at one point in time
14 that the problem we had because of the deal
15 changing with respect to other aspects outside
16 the inventory, okay, was that Lehman had no
17 way to pay for certain liabilities that we
18 were absorbing. I'm assuming -- and this is
19 an assumption because of the issue what
20 happened with the close-out of the repos by
21 their counterparties -- that somehow that
22 would -- those liabilities were being paid for
23 in the overall structure of the deal and now
24 there was a hole in the deal.

25 And so how you plug that hole was

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2 the question. And what we were asked was how
3 much do we think we have in haircut that could
4 plug that hole. And the difficulty that we
5 had is we didn't know how much we had in
6 haircut because we didn't have reliable
7 valuations on what we were getting. We did
8 know we were getting inventory that we had
9 valuation problems with and we had -- on those
10 items we had a relative understanding of how
11 much that was and how much shortfall you had
12 and therefore how much "haircut" would be
13 being absorbed by just valuation errors on
14 Lehman's part.

15 And then how much -- you know,
16 what do you think is kind of left over and
17 that's the question we were trying to answer
18 all day. All night.

19 **Q. Okay. And this effort of trying**
20 **to identify that question -- trying to answer**
21 **that question, did that effort continue into**
22 **the next day, the Friday?**

23 A. Yeah. It continued into Friday.

24 **Q. And did it continue after Friday?**

25 A. I'm not aware that it continued

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2 after Friday. But what did continue after
3 Friday was the process of understanding
4 exactly what we did get and marking it
5 appropriately.

6 **Q. Now, for the collateral that was**
7 **transferred over on Thursday you did at some**
8 **point receive a valuation report from Bank of**
9 **New York for that collateral, correct?**

10 MR. STERN: Objection to the form.

11 A. We received an indication what
12 they thought the value might be.

13 **Q. And when did you receive that**
14 **indication?**

15 A. My recollection is that was Friday
16 morning because we still hadn't been able to
17 get the information out of JPMorgan and we
18 still hadn't been able to get the information
19 from Lehman Brothers. And we were pretty
20 desperate to try to understand where we were
21 at that point in time.

22 **Q. And do you recall the value that**
23 **Bank of New York but on the collateral?**

24 A. There was several different runs.

25 There was one that was above 50. There was

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2 one that was 47. There was -- there were
3 several different runs.

4 You know, the Bank of America
5 numbers --

6 **Q. You mean the Bank of York numbers.**

7 A. Bank of New York. Sorry. Bank of
8 New York, correct.

9 You can't put that much reliance
10 on them or we couldn't put that much reliance
11 on them because they're not the agent for
12 Lehman. They don't have Lehman's marks. They
13 wouldn't know securities necessarily that
14 don't trade and aren't actively quoted. They
15 wouldn't have reliable, accurate marks on
16 those.

17 **Q. If they're not the agent for
18 Lehman whose agent were they?**

19 A. They're our agent. They were
20 seeing this stuff for the first time.

21 **Q. Did you ever make it down to the
22 courthouse for any of hearings about this
23 matter?**

24 A. No.

25 **Q. Did you ever talk to anyone who**

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2 **was down at the courthouse about the**
3 **courthouse hearings?**

4 A. Yeah, I did.

5 **Q. Who did you speak with?**

6 A. I spoke with Michael Klein at one
7 point asking him how it went. I think I spoke
8 with -- I'm drawing a blank on the guy's name.
9 It was our restructuring guy. Dan Shapiro.

10 MR. STERN: Mark Shapiro?

11 THE WITNESS: Mark Shapiro. I'm
12 sorry.

13 **Q. Do you recall anything that Mr.
14 Klein and Mr. Shapiro told you about the
15 courtroom proceedings?**

16 A. I was -- after the fact I was
17 interested in knowing, you know, what
18 happened. And, you know, is the judge going
19 to approve the deal or not approve the deal.
20 How did it go. And it was more along those
21 lines.

22 I guess during the -- while they
23 were in the courtroom I got asked the question
24 pretty late at night from Mark -- I think he
25 sent an e-mail out that he was trying to get a

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2 question answered. I answered that question.

3 **Q. Do you recall what the question
4 was?**

5 A. The question as I read it were did
6 we take any assets from JPMorgan out of the
7 tri-party repo. And, you know, I don't know
8 if you know what the tri-party repo was or not
9 but --

10 **Q. When you refer to the tri-party
11 repo what are you referring to?**

12 A. So, again, on the Monday night one
13 of the things that was going on in addition to
14 the asset purchase is JPMorgan came back to us
15 and said, Listen, you guys are buying these
16 guys. If you're buying some of the inventory
17 can you help us out, all right, and take some
18 of the repo of the securities you're buying
19 and provide -- take some of the load off of
20 them because everybody was strapped for cash
21 after this -- strapped for cash after the
22 bankruptcy.

23 And so they wanted to know if we
24 could provide any repo for what we were
25 buying. And so we agreed to buy -- to provide

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2 5 billion of repo of the inventory that we
3 agreed to buy on Monday night.

4 For some reason unknown to me
5 again that proved to be about 15 billion by
6 Thursday. And it contained securities that we
7 did not purchase or agree to purchase on
8 Monday night.

9 So the first thing I was asked
10 when I got to Lehman on Monday -- on Thursday
11 night, sorry, not Monday -- Thursday night,
12 was for -- Jerry del Missier called me up and
13 said take a look at the repo with JPMorgan and
14 tell me whether we should roll this or not.

15 And I got the list of collateral
16 that was in repo and there was a \$5 billion
17 security. I have no idea what it was but I
18 know we didn't purchase any \$5 billion
19 notional amount of security. So I advised
20 Jerry this is not what we agreed on Monday
21 night. It was not what we purchased. And,
22 you know, my recommendation would be not to
23 roll a repo with JPMorgan.

24 So Archie sent an e-mail out. I
25 guess he was trying to get a question

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Subtracting five hours from GMT, right?

A. No, no.

Three in the morning. So, yeah.
Sorry. Yeah. I don't know why his e-mail is
in GMT. I have no idea. But, yeah, he's --
yeah, that would have added five hours. So
it's 10:00 -- you're right. It's 10:00 on
Sunday night. 10:30 on Sunday night.

**Q. In his e-mail he makes reference
to I guess Lehman people walking out of the
Lehman building. It's being carried on the TV
coverage.**

Do you see that?

A. Yeah.

**Q. At this point, late Sunday night,
early Monday morning, the transaction that you
were contemplating and working on on the 13th
and 14th, that transaction was not going to go
forward, correct?**

A. That's correct.

**Q. Was there ever a contemplation
that you would hire the former Lehman
employees without buying any of the assets of
Lehman?**

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A. I did suggest that actually. So
on Monday -- it wasn't over the weekend that
we did that, right? So over the weekend, no,
the answer to your question. But on Monday,
right, when I was going through the assets
that were in Lehman's broker/dealer and what
other entities we might be buying or assets we
might be buying, one of the people I talked to
was Eric Felder. I was specifically talking
to him about -- one of the things was that I
recall talking to him about was auction rate
securities and there was a bunch of Lehman
commercial paper and notes that were in his
inventory as well which I talked to him about
which obviously weren't -- you know, weren't
marked correctly at that point in time after
the bankruptcy.

There were some credit link notes
that Lehman was the payor on that they
obviously wouldn't be able to pay going
forward. So those were the kind of topics I
was talking to him about. And, you know, how
should we look at the value of these things,
right? Because it's like Lehman is bankrupt

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now and Lehman is the payor on these things
and, you know, they can't possibly be worth
what you paid for them which is what they're
marked at.

And in the context of that
discussion we got onto the auction rate
securities and the auction rate securities I
suggested that we didn't want to take them
because of all the noise around auction rate
securities and the whole remarketing and how
we would do that if we were to take them, et
cetera.

And he said to me something to the
effect, Well, I didn't realize that you
couldn't take them, that we could leave stuff
behind. I said, Yeah, this is going to be an
asset purchase. It's not going to be the
purchase of a company. So we can leave
whatever we want behind.

And he suggested then you should
leave it all behind. You shouldn't take
anything. And I was kind of curious. He
said, Do you realize what's going on out
there, and then actually that Monday morning I

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didn't because we went over it -- you know,
Sunday night the transaction and, you know, we
ended it pretty depressed. Monday I came
in -- what I was really focused on Monday was
what's our exposure to Lehman. You know, what
swaps are going away. You know, that's what I
was focused open. I wasn't focused on what
was happening in the market.

So he said, "Do you realize what's
happening in the market?"

And I said, "No, I've been locked
up in your office all day. I don't have
access to anything. I have no idea what's
going on."

He said, "The whole world is
melting down out there."

He said, "So you guys are nuts if
you take anything. If you could leave it all
behind you should leave it all behind."

And actually when you sat back and
thought about it that seemed like a brilliant
idea.

So our first proposal to our
management when they said, Okay, you know,

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what are you guys comfortable buying, was --
we said nothing. Just leave it all here.
Just take the people.

And that didn't happen though,
obviously. We were told to go back and try
again. Actually, we were instructed to take
everything that we could take because the
concern over whether -- you know, what you'd
be leaving Lehman with without people to
manage the inventory and leaving all of that
inventory on their balance sheet in markets
that were, you know, falling apart.

**Q. Was there also discussion that
some of Lehman's inventory was worth
purchasing at the right price?**

A. I don't recall if there was or
not. I mean, that wasn't the instruction.
The instruction was in effect if you want the
deal to go through you got to try to take
everything you can because if you leave too
much behind and you leave -- and you leave --
and no people to manage it, that will never
get approved.

Q. And who did you have that

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**discussion with about whether all should be
left behind or none should be left behind?**

MR. STERN: Let me just pause here
because I think we're blurring over into
privileged conversations but I think you
can answer. You can answer that
question and then we'll take it a
question at a time.

A. It was our bankruptcy counsel
basically.

Q. Your in-house bankruptcy counsel?

A. No, no. Our outside advisors plus
Archie Cox.

**Q. Who was your external bankruptcy
counsel at that time?**

MR. STERN: You can answer that if
you remember.

A. I think it's Cleary but I could be
wrong.

**Q. You were in discussions with
Cleary?**

A. They were in the room when I --
when we came in and suggested that we take
nothing.

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**Q. Who else was in the room when you
came in and suggested --**

A. Archie Cox.

Q. And who else from Barclays?

A. That was it.

**Q. So it was you, Archie Cox, and
someone from Cleary?**

A. Two people from Cleary, yeah.

**Q. Do you remember who the people
were from Cleary?**

A. Well, actually, Michael Klein
might have been in the room. I can't say for
certain, but he might have been in the room.
I can't say -- no, I can't say for certain.
You know, I don't know. It was a woman and a
guy.

Q. Lindsay Grandfield?

A. I don't remember the name.

**Q. And do you recall when that
meeting was?**

A. It was about 6:30, 7:00 on Monday
night.

(Deposition Exhibit 301A, document
bearing production numbers

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BCI-EX-(S)-00082251, marked for
identification as of this date.)

BY MR. TAMBE:

**Q. Sir, I've handed you a one-page
document marked 301A. Take a moment to look
at it and let me know when you're done.**

(Document review.)

A. Okay.

**Q. When you'll see this is an
exchange of e-mails between Rich Ricci, Robert
LeBlanc, and Patrick Clackson.**

Do you see that?

A. Yep.

Q. Who is Robert LeBlanc?

A. Rob LeBlanc is head of group risk
at Barclays PLC.

**Q. And you see there's a reference in
the first e-mail at the bottom of the chain to
the assets that would be included.**

Do you see that?

A. Yeah. "Please could you let me
know who I can speak to later today to broadly
understand the assets that would be included.
Thanks."

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2 **Q. And then at the top of the**
3 **document, Rich Ricci's e-mail states, "Looks**
4 **like roughly \$50 billion."**

5 **Do you see that?**

6 A. Yep.

7 **Q. Was it your understanding that the**
8 **assets that would be included in the purchase**
9 **as of Monday, September 15th, were roughly**
10 **\$50 billion?**

11 A. We were paying -- I don't know how
12 he knows that necessarily, right? We were
13 paying 45 billion for assets that were under
14 repo at the Fed, right? So, you know, repo
15 lending basically is secured lending. And a
16 percentage of the value of the assets is
17 typically advanced, not a hundred cents on the
18 dollar but a percentage.

19 That difference between the
20 advance amount and the asset market value --
21 or mark is probably a better term -- is the
22 haircut or cushion that the financier requires
23 in order to protect themselves in the event
24 they need to liquidate the inventory.

25 MR. STERN: Can you reread the

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2 question, please, Francis.

3 (Record read.)

4 A. I didn't know what they were. So
5 that's a better answer. I didn't know what
6 they were necessarily.

7 **Q. Did you understand the reference**
8 **in Rich Ricci's e-mail of 50 billion to be the**
9 **value of the assets to be included in the**
10 **purchase?**

11 A. No. What I was actually trying to
12 explain to you was if we were paying 40 -- I
13 don't know what they were exactly, but if we
14 were paying 45 billion to take the Fed out of
15 its repo, plus some haircut on top of that to
16 get to 50 billion, I'm not surprised. But I
17 don't know for a fact one way or the other
18 what they were. That's the information we
19 were trying to get from Lehman and couldn't
20 get.

21 (Deposition Exhibit 302A, document
22 bearing production number
23 BCI-EX-00054270 with attached
24 spreadsheet, marked for identification
25 as of this date.)

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2 A. I just noticed that this is
3 actually a Monday e-mail. So it's 4:03
4 Monday.

5 **Q. Yeah.**

6 A. So this was the first deal, right?
7 And everything I said to you was -- on the
8 repo had to do with Thursday's deal, not
9 Monday's deal. So that was an error on my
10 part giving you that answer. I thought this
11 was Thursday's deal. Okay? So --

12 MR. STERN: The "this" you're
13 referring to is Exhibit 301A?

14 THE WITNESS: Yes. 301A.

15 **Q. So let's go back to now you're**
16 **focused on the fact that it's Monday's deal.**
17 **What's the 50 billion that Rich Ricci is**
18 **talking about?**

19 A. I don't know. At that point in
20 time I don't know. Because at that point in
21 time we were still going through -- I mean, we
22 were still going through the assets, and I
23 probably didn't have my conversation with
24 Felder until about 3:00 on Monday. And as I
25 said earlier, Lehman -- one thing they weren't

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2 prepared for certainly was bankruptcy. So
3 that whole exercise on Monday getting us
4 information, they had a very difficult time.
5 So I have no idea where he got his information
6 of 50 billion from. But he did know the
7 process we were going to go through at that
8 point in time which was we were going to go
9 through and sift through the inventory and
10 take what we wanted. It was going to be an
11 asset purchase and so we would take what we
12 wanted and not take what we didn't want.

13 **Q. And in his e-mail, Rich Ricci's**
14 **e-mail at the top of Exhibit 301, he makes a**
15 **reference to you and Mahon.**

16 **Do you see that?**

17 A. Yes.

18 **Q. And he makes a reference to "all**
19 **good and clean."**

20 **Do you see that?**

21 A. Yes.

22 **Q. That's a reference that you'd been**
23 **separating out excluded assets from the assets**
24 **that you wished to have included; is that**
25 **right?**

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2 A. You got to ask Rich.

3 Q. Well, you were looking to identify
4 the good and clean assets, right?

5 A. We were looking to identify assets
6 that we'd be comfortable purchasing, yes.

7 Q. And those would be the good and
8 the clean ones.

9 MR. STERN: Objection to the form.

10 A. You got to ask Rich.

11 Q. Well, were you identifying assets
12 that were, you know, of questionable value?

13 A. My assumption was we were going to
14 take all the assets initially, okay, and that
15 we were supposed to come up with a value that
16 we would take them at, that we felt
17 comfortable taking them at, right?

18 And we knew from the weekend that
19 Lehman's assets weren't -- you know, weren't
20 marked tightly, that they were marked very
21 much on the aggressive side, which isn't
22 surprising since they were struggling
23 financially and potentially going out of
24 business, that they marked things, you know,
25 less than conservatively, right?

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2 clean. We gave him a list of things we
3 thought they could buy and at a suggested
4 price.

5 MR. TAMBE: Let's just take a
6 short break.

7 (Recess taken.)

8 BY MR. TAMBE:

9 Q. So, sir, I've placed before you a
10 document marked Exhibit 302A which is a cover
11 e-mail with a large set of spreadsheets behind
12 it. I'm not going to quiz you in detail about
13 the spreadsheets but if you could review the
14 cover e-mail and flip through the spreadsheets
15 and I'll ask you some questions.

16 (Document review.)

17 A. Okay.

18 Q. Looking at the cover e-mail and
19 the attached schedules, is this part of the
20 effort relating to the transaction we talked
21 about, the Monday transaction, as opposed to
22 the Thursday transaction?

23 A. Looks like it, yeah.

24 Q. And it's an e-mail -- the cover
25 e-mail is an e-mail from Stephen King to

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2 So we knew that going in that we
3 had to -- we had to get a good mark on them,
4 or a good reasonable mark on them.

5 Now, the time frame in which
6 you're doing this in everything is done kind
7 of, you know, rough numbers. It's not -- you
8 know, we didn't have time to take every CUSIP
9 and validate a price for each security. In
10 fact, none of that was done on Monday. I
11 mean, we took the information that we had
12 developed over the weekend which, you know, on
13 certain inventory that's what we did, we
14 took -- we did the CUSIP pretty much and came
15 up with what we thought the value was and how
16 much we thought we were off.

17 We took that information and kind
18 of overlaid it on what we were actually being
19 asked to take on Monday.

20 Q. Did you ever give Rich Ricci a
21 list of good and clean assets on Monday, the
22 15th of September?

23 A. Certainly not by 4:03 p.m., no.

24 Q. At some point on Monday?

25 A. Not a list that we called good and

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2 Archie Cox and you're shown as a c.c.

3 Do you see that?

4 A. Yep.

5 Q. And what role did Archie Cox play
6 in this transaction?

7 A. I don't really know actually. He
8 was a senior guy. I mean, he was chairman of
9 the US. So -- but did he have a line
10 responsibility in this transaction, you know,
11 I'm not so sure. I mean, he --

12 Q. When you think of the group of
13 Barclays business people who were leading the
14 Lehman/Barclays transaction in its various
15 forms who are the people that come to your
16 mind?

17 A. Rich Ricci. John Hughes in legal.
18 I guess myself with respect to the inventory.
19 Stephen King. Jerry. And Bob Diamond and
20 Archie. I mean, Archie -- and also Michael
21 Klein.

22 Q. And of this grouping of people,
23 the folks who were actually negotiating the
24 terms of the transaction, would it be a subset
25 of this group?

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A. Yeah. I would say the terms of the transaction were negotiated by, you know, Rich and Jonathan Hughes. And our counsel.

Q. And what role did Michael Klein play in all this?

A. He was an advisor to Barclays over the weekend principally.

Q. At any time during the September 12th on period, did you have any conversations with Michael Klein about the assets to be purchased?

A. From what time period are you talking about?

Q. Starting on the 12th of September onwards.

A. Yeah. Periodically I had conversations. You'd have to be more specific with your question what you're asking me.

Q. Do you recall specifically conversations that you had with Mr. Klein about the assets that Barclays was going to purchase from Lehman?

A. The only conversation -- specific conversation that -- substantive conversation

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for Barclays to close that gap and one of them was this list. And I was asked to look through the list to see if we thought the securities were worth what they were putting on the piece of paper to be worth. And actually could do very little with respect to the list because it wasn't a book quite this thick (indicating) but it was thick. Most of it was a lot of zero valued securities which was principally the residuals and junior pieces of their -- of Lehman's asset backed securitization deals they had done through the years that they had held onto or didn't sell.

The bulk of the value -- and I forget what the value of this list was -- but the bulk of the value was made up by a handful of municipal securities which we were able to get some comfort on the pricing that was reasonable based on going to Bloomberg.

There was another security, Navigator, which was a restructured private equity security that I talked to a guy named Bob Mallard about. He ran -- he was the person at Lehman that ran -- I had no idea

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that I know -- that I know I had with him was with respect to -- it was on the Friday morning with respect to -- Friday morning, the 19th -- with respect to the -- I don't know what you want to call them. They were called unpledged assets, which was the list of assets that were sitting in Lehman's -- purportedly sitting in Lehman's box that were not pledged against financing principally because they were, you know, some sort of unique security or private security that may be in some cases physical securities that weren't easy to put into repo. That weren't easy to finance.

Q. And what was your discussion with Mr. Klein about those unpledged securities?

A. This is on Friday morning and it was again we were asked -- Lehman was trying to come up with additional value to close the gap on the liabilities and to -- and also on the -- to a certain extent on the excluded inventory that we had been delivered that we felt was marked incorrectly.

And one -- there was several items that were proposed as potentially having value

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what Navigator was. I knew it was a hundred -- if I remember correctly it was 144 million, so it was a reasonable amount of what the value in this account was. And, you know, is it worth 144 million, I have no idea. So they put me in touch with Bob Mallard and I talked to him about it. And he explained to me what Navigator was. It didn't give me a whole lot of comfort on the value but at least I knew what it was. It was a real operating company.

Q. What's your understanding of the value of the unpledged assets?

A. You know, off the top of my head I honestly don't remember.

Q. There's \$1.9 million that's referenced in some of the e-mails. Does that refresh your recollection?

A. Could be. I don't remember.

Q. You said there were several items proposed to plug the gap. The unpledged assets was one of those items. What other items were proposed?

A. There was an FX clearing account

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2 which it was purportedly up to a billion
3 dollars of good faith deposits in which turned
4 out not to be real. It may have been real at
5 one point in time but C Corp was the
6 settlement agent for Lehman for FX. And I
7 know Gerard LaRocco called Citicorp to find
8 out what they thought about the value of that
9 account. They kind of laughed at him. They
10 said, Of course that's gone. They closed out
11 all their accounts and used up -- closing out
12 their contracts.

13 There was some exchange traded
14 futures that I had nothing to do with and
15 don't understand.

16 There was a couple other dead-ends
17 which I don't remember what they are off the
18 top of my head.

19 **Q. Was one of the items 15(c)(3)**
20 **cash?**

21 A. Might have been. I don't
22 remember.

23 **Q. Is that a term you're familiar**
24 **with?**

25 A. Restricted cash? Yeah, sure.

1 M. KEEGAN - HIGHLY CONFIDENTIAL
2 Customer cash?

3 **Q. Right. Customer cash.**

4 A. Yeah.

5 **Q. And are you familiar with the**
6 **notion of customer cash being one of the items**
7 **that was proposed to plug the gap here?**

8 A. Not really. I mean, I don't know
9 how you would plug it with customer cash
10 unless they had deposits -- that Lehman had
11 deposits within the 15 -- their own 15(c)(3)
12 deposits, right? Which that might be their
13 money.

14 **Q. The exchange traded futures that**
15 **you referenced, was that -- were those OCC**
16 **transactions?**

17 A. I believe they were exchange
18 traded futures.

19 **Q. On what exchange?**

20 A. I wasn't involved. I just know
21 there was a list of five or six items that
22 they proposed. You know, can you get us some
23 additional value to cover the cost for some
24 liability that we were taking on so...

25 **Q. And you told us the FX clearing**

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1 M. KEEGAN - HIGHLY CONFIDENTIAL
2 **account, that was an item that in your opinion**
3 **went nowhere. There was no value there; is**
4 **that right?**

5 A. I was actually in Gerard's office
6 when Gerard was on the phone with Citicorp,
7 the clearing agent at Citicorp, and the
8 clearing agent at Citicorp assured him that
9 through the process of liquidating the open FX
10 contracts that Lehman Brothers' various
11 entities had open with Citicorp, that that
12 deposit was fully consumed in that process and
13 that there was no value.

14 **Q. Do you know whether there was any**
15 **value on the exchange traded futures?**

16 A. I don't know if there was.

17 **Q. And you don't know one way or the**
18 **other whether there was any additional value**
19 **or accessible value in the 15(c)(3) accounts?**

20 A. Nope.

21 **Q. At that time have you heard of any**
22 **excess margin, excess OCC margin that was**
23 **transferred from Lehman to Barclays?**

24 A. No. I mean, I just wasn't
25 involved with that aspect of it, right? I

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2 don't know anything about futures and exchange
3 traded contracts and clearing and settlement.
4 It wasn't what I was asked to do.

5 **Q. Over the week -- the following**
6 **weekend, the weekend of the 20th-21st, did you**
7 **remain involved in aspects of the transaction?**

8 A. Well, I went home Friday so I
9 basically worked Thursday night till 4 in the
10 morning. Went to the Four Seasons and slept
11 from 4 to 6. Came back at 6. And then Rich
12 been to bed at -- you know, 6 to -- he was
13 back by 9 I think. And then I worked that
14 morning until probably again 2:30, 3:00. Went
15 home. Checked in on Saturday morning to try
16 to find out what happened at the court
17 hearing. Asked if I was needed and was told I
18 wasn't needed. So I stayed home. And then I
19 ended up having to get on the phone and spent
20 really pretty much most of the weekend on the
21 phone talking to various Lehman employees that
22 we had hoped were coming to join us but were
23 talking to other firms about not coming and so
24 I talked them out of doing that and coming
25 with us instead. So that's that I spent the

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1 M. KEEGAN - HIGHLY CONFIDENTIAL
2 weekend doing mostly.

3 Q. With respect to movement of
4 collateral or valuation of collateral did you
5 have any involvement in that?

6 A. I didn't do anything in that.

7 Q. How about the following week, the
8 week of the 22nd, were you involved in any
9 movement of collateral or valuation of
10 collateral that week?

11 A. No. Not really. That was --
12 once -- once the -- you know, we closed on the
13 trade, got possession of what we got
14 possession of, that was -- Stephen was the
15 point person for that. He was the point
16 person for coordinating with all the other
17 desks and putting the proper value on it and,
18 you know, distributing it out to the desks and
19 hedging it, et cetera. That was his job. He
20 kept me informed of what he was doing in the
21 big picture, but I wasn't involved day to day.

22 Q. Do you have any knowledge of a
23 settlement that was entered into between
24 JPMorgan, Barclays, LBI, Lehman Brothers,
25 Inc., the broker/dealer, in December of 2008?

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2 A. I don't know what the terms of the
3 settlement were if you're asking me that.

4 Q. I'm asking you if you were aware
5 of the fact of the settlement.

6 A. Yeah. I believe there was a
7 settlement. I know that after -- so Lehman --
8 so JPMorgan and -- I believe because they had
9 operational problems were unable to deliver
10 securities to us timely on that night. Were
11 unable to deliver everything that was in
12 the -- the we thought was in the repo to us.
13 So they delivered -- and they delivered us
14 securities late. Our clearing agent stayed
15 open as late as they could which was well past
16 what they normally would do. You know, say, 2
17 in the morning. And we hadn't received -- we
18 put 45 billion of value out, but by JPMorgan's
19 measurements they hadn't given us 45 billion
20 yet. And so they posted another 7 billion in
21 cash is what I know. We got 7 billion in
22 cash.

23 And that -- we did have cash. And
24 then we went to move the cash later apparently
25 and JPMorgan said you don't have cash. And

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1 M. KEEGAN - HIGHLY CONFIDENTIAL
2 obviously there was a dispute about that.

3 Q. And your understanding is that the
4 settlement was to settle up that dispute.

5 A. Yeah.

6 MR. STERN: You marked 302A. Are
7 we going to use that?

8 MR. TAMBE: We used it a little
9 bit. We'll go back and use it some
10 more.

11 MR. STERN: Okay. I just want to
12 note for the record that 302A may be a
13 privileged document at least in part.
14 I'm not sure. I would have to talk to
15 some people about that. But I just want
16 to reserve my position on that.

17 BY MR. TAMBE:

18 Q. So I've put before you, sir, a
19 document marked Exhibit 144A. Take a moment
20 to look at that document and let me know when
21 you're done.

22 (Document review.)

23 A. Okay.

24 Q. And you'll see the bottom of the
25 document there's an e-mail from Marty Malloy

1 M. KEEGAN - HIGHLY CONFIDENTIAL
2 to J. LaRocco and others.

3 Do you see that?

4 A. Um-hum.

5 Q. Yes?

6 A. Yes.

7 Q. And there's a totalling up of
8 values and cash amounts.

9 Do you see that?

10 A. Yeah.

11 Q. There's a line item in that e-mail
12 that says Excess Collateral, 7.19.

13 Do you see that?

14 A. 7.19. Yeah. I see that. Okay.
15 I see it.

16 Q. You don't know what that means?

17 A. No, I don't know what it means off
18 the top of my head.

19 Q. And further up there there's a
20 line that says Repo Cash Settlement 7.00.

21 Do you see that?

22 A. Sorry. I may be looking at the
23 wrong line on your last question because the
24 1.7 was on the same line as the repo cash of 7
25 billion. So is that correct? Is that the 1.7

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1 M. KEEGAN - HIGHLY CONFIDENTIAL
2 you were referring to?

3 Q. No. I was asking you to look at
4 the line that says Excess Collateral.

5 A. Oh, sorry. Sorry, sorry, sorry,
6 sorry, sorry. Okay. I answered the
7 question -- I did answer the question
8 incorrectly because I was looking at the 1.7
9 trying to figure out what that is.

10 Q. So let's go to the line that says
11 Excess Collateral, 7.19.

12 A. Sorry. I didn't understand your
13 question properly.

14 Q. Do you have any understanding of
15 what that means?

16 A. Yeah. I do have an understanding
17 of what that means. This BoNY -- I think I
18 testified earlier that we were trying to find
19 out how much value we received from the repo
20 from Lehman Brothers, JPMorgan, and they
21 couldn't tell us. Okay? BoNY, because it
22 passed through their clearance systems, has a
23 rough estimate of what they believe that
24 number is to be, okay? And gave -- and that's
25 their -- the total securities in cash received

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2 is the sum of their rough estimates, right?

3 Plus the 7 billion in cash that's posted in
4 the repo plus another small DTC cash item to
5 come to I guess \$52.19 billion of value.

6 And then I assume the 45 billion
7 is a repo cash that -- the cash we sent out to
8 JPMorgan. And so what is referred to as
9 excess collateral is the -- probably a better
10 term. And that is the haircut differential if
11 you believe BoNY's values.

12 Q. Who's Marty Malloy?

13 A. Marty was a prime brokerage
14 employee. A security borrow lending. I'm not
15 sure -- because it was repo I guess he was
16 involved.

17 Q. After his name on that e-mail
18 address Marty Malloy it says CFG MGMT. Does
19 that phrase have any management to you?

20 A. CFG management. Collateral
21 something -- yeah. Collateral from the
22 finance group. I have no idea. I don't know
23 what it means. I don't know definitively.

24 Q. Okay. If you go back to
25 Exhibit 302A there are a series of numbered

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1 M. KEEGAN - HIGHLY CONFIDENTIAL
2 items.

3 Do you see that?

4 A. Yep.

5 Q. And the first numbered item ends
6 with a question. "Can securities be sold by
7 LBI without approval at a discount to current
8 mark?"

9 Do you see that?

10 A. Um-hum.

11 Q. Yes?

12 A. Yeah, I see it.

13 Q. Do you know what that means?

14 A. Not definitively, no.

15 Q. Was it your understanding that LBI
16 was selling securities to Barclays at a
17 discount to the current mark?

18 A. This is Wednesday so this was the
19 Monday night transaction. We did go through
20 and identify haircuts is the term I would use
21 as opposed to discounts. But we applied to
22 the various security line items to account for
23 the fact that we were buying inventory in
24 bulk, to account for the fact that we were not
25 being able to close on the inventory until

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2 Friday at the earliest, to account for the
3 fact that the markets were melting down, and
4 that we didn't have certainty of the valuation
5 that Lehman -- we knew that Lehman had been
6 aggressive with their valuations and we didn't
7 have, you know, clear certainty with respect
8 to what the value of all the securities were.
9 So there were, you know, haircuts applied to
10 the inventory.

11 Q. Sir, I'm showing you a document
12 that's previously been marked as Exhibit 19.
13 Have you seen this document before today?

14 A. Again, only in prep for this
15 deposition.

16 Q. Okay. Is it fair to say that
17 you -- well, do you understand the information
18 that's contained in this document?

19 MR. STERN: Objection to the form.

20 A. I understand what I've been told I
21 guess.

22 Q. By counsel?

23 A. By counsel, yeah.

24 Q. Okay. And putting aside anything
25 you were told by counsel, do you have any

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2 billion of cash out in the market because
3 markets were so skitterish and so concerned
4 about, you know, banks failing that we felt
5 that people might -- if they found that we had
6 a 7 billion hole, a potential hole in our
7 balance sheet, people might pull their
8 financial support. I believe that was the
9 reason.

10 So to get the settlement we agreed
11 to forgive the lawsuit. Drop the lawsuit.

12 **Q. When did Barclays first now it had**
13 **a \$7 billion hole?**

14 A. I have no idea. It was -- I mean,
15 we didn't we had a hole at all because the
16 cash was put in the account but when they went
17 to remove it which was, you know, days later
18 JPMorgan said the cash isn't there so...

19 **Q. In some of your prior testimony**
20 **you stated that some of the collateral that**
21 **was delivered --**

22 A. I'm sorry. I missed the beginning
23 of your question.

24 **Q. Yeah. In some of your prior**
25 **testimony you had stated that some of the**

1 M. KEEGAN - HIGHLY CONFIDENTIAL
2 **collateral that was delivered on Thursday**
3 **night included securities that Barclays did**
4 **not wish to purchase, correct?**

5 A. Um-hum. Yes.

6 **Q. Did Barclays return that**
7 **collateral?**

8 A. No, we didn't return the
9 collateral. I testified that I went to Ian
10 Lowitt and said, "Ian, you got to take this
11 back and swap us into the collateral we
12 bought."

13 And he said, "That's impossible."

14 I should say the collateral we
15 agreed to buy on Monday night. So collateral
16 not on the excluded list.

17 And he said, "That's impossible
18 because our counterparties had been grabbing
19 -- our repo counterparties have been grabbing
20 collateral and liquidating it and buying us
21 in" is the term "on our repo and we don't have
22 it anymore. So this is what you got."

23 **Q. So Barclays kept the collateral**
24 **that had been transferred over Thursday night**
25 **and you had additional collateral then**

1 M. KEEGAN - HIGHLY CONFIDENTIAL
2 **transferred to you on Friday, the items that**
3 **we were talking about to fill the gap.**

4 MR. STERN: Objection to the form.

5 A. We had the repo collateral from
6 the Fed that JPMorgan delivered to us. We had
7 the deposit from JPMorgan. And, to my
8 knowledge, we had the additional thing that I
9 knew at the time that we had was the -- or
10 should have had was the unpledged box. That's
11 what I knew we were supposed to have.

12 The only thing I'd say is that
13 that may not be the only thing that we were
14 supposed to have. There were pieces of the
15 transaction that I -- you referred to them
16 earlier, the 15(c)(3). I have no idea whether
17 they were supposed to have it or didn't have
18 it. I don't know. And the exchange traded
19 derivative contracts were one of the things
20 that were proposed by Lehman for us to have.
21 But I wasn't looking at it. And I didn't
22 follow up with it. That was decided for us to
23 have it or not have it. I don't know.

24 (Deposition Exhibit 305A, document
25 bearing production number

1 M. KEEGAN - HIGHLY CONFIDENTIAL
2 BCI-EX-(S)-00036496, marked for
3 identification as of this date.)

4 BY MR. TAMBE:

5 **Q. Sir, I've handed you a one-page**
6 **document marked 305A. Would you take a moment**
7 **and look at it and let me know when you're**
8 **done.**

9 (Document review.)

10 A. Okay. I read it. I don't quite
11 understand it right now.

12 **Q. You're anticipating my question.**

13 A. No, I'm not anticipating your
14 question. I just don't -- I'm anticipating
15 you're going to ask me what it means and I'm
16 struggling to remember at the time.

17 **Q. But you see this is an e-mail**
18 **exchange between Jasen Yang, Stephen King, and**
19 **yourself.**

20 A. Yeah.

21 **Q. And it has to do with valuation of**
22 **Fed collateral.**

23 **Do you see that?**

24 A. Yeah.

25 **Q. Having read this e-mail can you**

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1 **M. KEEGAN - HIGHLY CONFIDENTIAL**
2 **explain what this -- the issue that's being**
3 **discussed in this e-mail?**

4 A. Well, my interpretation of it, and
5 I don't know whether it's an accurate
6 interpretation, 18.6 billion of lost Fed
7 collateral, right, so that's collateral that
8 we expected to get from the Fed that was
9 supposedly in the Fed box that JPMorgan was
10 supposed to deliver and didn't deliver, right?

11 He's saying it was about --
12 1.1 billion wasn't able to get prices for.
13 They're mainly structured notes, large
14 potential discount, Yankee bonds, unlikely to
15 have a large discount. When I couldn't get
16 the Barclays price I used the custodian price.

17 So I guess reading that again I
18 don't know what he means by lost Fed
19 collateral. Whether it's 18.6 of collateral
20 that we got that we didn't anticipate getting
21 or whether it was 18.6 that we were supposed
22 to get and didn't get. I just don't recall
23 right now.

24 **Q. Going to your e-mail at the top of**
25 **the page you say if I read this right, "There**

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1 **M. KEEGAN - HIGHLY CONFIDENTIAL**
2 **is a \$1.9 billion difference."**

3 A. Yeah, that's what I'm trying to
4 figure --

5 **Q. Any idea what that means?**

6 A. I don't know what -- I'm trying --
7 I'm trying to figure that out right now. I'm
8 trying to remember what that means. What that
9 was referring to. I just don't remember right
10 now off the top of my head.

11 **Q. And in the next line you have a**
12 **reference to 20 -- a swing of 28 billion gross**
13 **inventory differences. What does that mean?**

14 A. (Reading document.)

15 **Q. What does that mean?**

16 A. That's the one I'm trying to --
17 I'm stumped on. I know it's my own e-mail.
18 I'm stumped right now.

19 **Q. Did you play any role -- you can**
20 **put the document aside, yeah. We're done with**
21 **the document.**

22 A. Sorry.

23 **Q. Did you play any role in the fall**
24 **of 2008 or early 2009 in helping Barclays'**
25 **auditors account for the acquisition of the**

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1 **M. KEEGAN - HIGHLY CONFIDENTIAL**
2 **Lehman assets?**

3 A. No.

4 **Q. All right. Let's just take a**
5 **short break.**

6 A. The auditor -- by the way, the
7 auditor you're referring to is PriceWaterhouse
8 I assume?

9 **Q. I assume it's PriceWaterhouse. I**
10 **don't know who all the auditors might be for**
11 **Barclays.**

12 MR. STERN: I'm sure it's
13 PriceWaterhouse.

14 A. Okay. But you're -- the external
15 auditors.

16 **Q. The external auditors.**

17 A. No. The answer to that is no.

18 **Q. Let me ask the follow-up question.**
19 **Have you worked with any internal auditors at**
20 **Barclays?**

21 A. None. Zero. But I was just
22 curious.

23 (Recess taken.)

24 BY MR. TAMBE:

25 **Q. Mr. Keegan, are you aware of any**

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1 **M. KEEGAN - HIGHLY CONFIDENTIAL**
2 **sales of assets that were purchased by**
3 **Barclays from Lehman?**

4 A. You mean liquidation of the
5 inventory?

6 **Q. Liquidation of the, yeah,**
7 **collateral that was transferred over.**

8 A. I know we did liquidate a lot of
9 it, yeah. Not all of it but...

10 **Q. And do you know generally the**
11 **values at which you liquidated it?**

12 A. No. I don't know.

13 **Q. And was any of the collateral**
14 **liquidated by you or was this just something**
15 **you heard about it?**

16 A. No. I didn't liquidate any of the
17 collateral.

18 **Q. And how do you know that you did**
19 **liquidate a lot of it?**

20 A. Because that was -- you know, that
21 was the goal. The goal was that we weren't --
22 owning assets during this time period was not
23 a good thing. So you're trying to hedge it
24 and get your risk down.

25 **Q. Are you generally familiar with**

1 M. KEEGAN - HIGHLY CONFIDENTIAL
2 the gain on the acquisition that was reported
3 by Barclays?

4 A. I'm familiar that we reported a
5 gain in our financial statements, yeah.

6 Q. And are you familiar with the
7 reasons for the gain?

8 A. Only, again, in preparation for
9 the deposition. So generally no.

10 Q. All right. I --

11 A. I don't believe any of it came
12 from securities.

13 Q. You don't believe any of it came
14 from securities?

15 A. I have no knowledge where it came
16 from but I don't know why it would come
17 from -- I don't know why. Under the
18 circumstances of what happened -- what was
19 happening and what happened subsequently in
20 market values, that we would have been booking
21 gains from the liquidation of the inventory if
22 that's what you're asking.

23 You know, I mean, I know there's
24 one bond, for instance, that we got that was
25 on the excluded list that we don't want --

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2 didn't want. We got it. It was Pine. It was
3 one of the structured transactions that Lehman
4 did that took their revolve -- it was for the
5 financing of their revolvers for their
6 commitments that they gave out to corporate
7 companies.

8 They securitized them so they
9 could finance them with the Fed. And it was
10 like the Racers which you referred to earlier.
11 It was a billion dollar security. It had a
12 billion dollar mark on it. We valued it at
13 like \$600 million in our valuation over the
14 weekend. We ended up with that. And, you
15 know, we backed it up with all the loans which
16 we didn't want.

17 So the estate's been trying to buy
18 it from us ever since and they're offering us
19 like 650 for it or 600. I think that's going
20 to be the best offer is the 600. Now, we got
21 that at a billion minus, maybe, you know, a
22 regular corporate haircut of 5 percent.

23 So that was -- you know, that was
24 one example of a security that we still
25 haven't liquidated that we still hold onto

1 M. KEEGAN - HIGHLY CONFIDENTIAL
2 that was on the excluded list initially. And
3 unfortunately under the circumstances we ended
4 up with it. And they're kind of validating
5 our price. And your estate is kind of
6 validating our price -- your client is
7 validating our price by offering us 650 for
8 it.

9 Q. Putting aside Pine are you aware
10 of the circumstances of any other securities
11 that were transferred over? Whether it was
12 sold or whether they're being held.

13 MR. STERN: Objection to the form.

14 I'm not sure what the question is.

15 Q. Do you understand the question?

16 A. No, I don't. I really don't. I
17 don't know what you're after.

18 Q. You described in detail the
19 details of Pine and the valuation of Pine.
20 Putting Pine aside, are you aware of the
21 circumstances, the specifics of any other
22 securities that were transferred over, whether
23 they're being held, whether they're being
24 liquidated, whether there have been offers for
25 the purchase of those securities?

1 M. KEEGAN - HIGHLY CONFIDENTIAL
2 A. So the process was securities
3 which were liquid, okay, were -- well, all
4 securities were hedged, you know, to the
5 extent we could hedge them immediately. And
6 then the hedges and the securities for stuff
7 that was liquid, and we liquidated the market,
8 were passed back to the various trading desks
9 to be liquidated, to be sold, as ordinary
10 course of business.

11 The stuff that was unusual or
12 illiquid and all of the ABS securities stayed
13 with Stephen and Stephen liquidated them over
14 time. But that's just ordinary business. I'm
15 not aware -- you know, I'm not aware of any
16 extraordinary gains or necessarily met
17 extraordinary losses that we had coming into
18 that so...

19 MR. TAMBE: No further questions.

20 Thanks.

21 MR. STERN: Okay. So the
22 trustee's lawyer will move over here and
23 ask his questions.

24 THE WITNESS: Okay.

25 * * *

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1 M. KEEGAN - HIGHLY CONFIDENTIAL
2 cetera, right? Because they had a huge -- I
3 don't know what was reported, 25 billion or
4 something like that, secured exposure to
5 Lehman. That they would ultimately liquidate
6 that exposure and you'd see those securities
7 in the marketplace and then we might be a
8 natural buyer for something like the B note
9 for Pine since we owned the A note already.
10 But we never saw the paper come out.

11 Q. I'm sorry. What was the last --

12 A. We never saw the paper come out
13 so...

14 (Deposition Exhibit 307A, document
15 bearing production numbers
16 BCI-EX-00053873 through BCI-EX-00054261,
17 marked for identification as of this
18 date.)

19 BY MR. WOOD:

20 Q. I've handed you what's been marked
21 as Exhibit 307A. As you'll see it's an e-mail
22 chain with a pretty hefty attachment. Feel
23 free to look at the attachment if you'd like
24 but I'm really just going to ask you some
25 questions about the e-mails themselves.

1 M. KEEGAN - HIGHLY CONFIDENTIAL

2 A. Okay.

3 MR. STERN: So, Mike, you may want
4 to read through the e-mails and then
5 just glance at the attachments.

6 THE WITNESS: Yeah, no. That's
7 fine. I just want to see what this is
8 to see if I understand it.

9 MR. WOOD: And just so the record
10 is, clear this, is an e-mail and the
11 first page is BCI Exhibit 00053873.

12 MR. STERN: Well, it's Bates
13 number BCI-EX-00053873 through -- the
14 numbers appear to be cut off on this
15 copy. So, Mike, just let us know after
16 you've had time to review this.

17 THE WITNESS: Okay. The problem
18 is there's two bids floating around.
19 I'm trying to figure out which one this
20 is.

21 (Document review.)

22 A. Okay.

23 Q. If you look on page 2 of the
24 e-mail, so the earliest e-mail
25 chronologically, it's an e-mail from Jasen

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1 M. KEEGAN - HIGHLY CONFIDENTIAL
2 Yang, Monday, September 22nd. The subject is
3 Financing Facilitate Schedule. He writes,
4 "Robert, James, I've attached the schedule
5 produced by Barclays ops of the collateral
6 currently held at BoNY under the repo
7 financing provided to Lehman (with a total
8 BoNY market value of approximately 45
9 million). It appears to differ substantially
10 from the file received from Lehman on Friday
11 evening. We're looking at the differences
12 now."

13 Just one first point of
14 clarification. That 45 million, do you think
15 that's accurate or is that supposed to be 45
16 billion?

17 MR. STERN: Objection to the form.

18 A. Total BoNY market value 45
19 billion. I would -- I'm speculating but I
20 think it's probably billion he's probably
21 referring to. I said there were several
22 different versions of BoNY collateral value
23 list put in front of us. There was a 47 list,
24 there was a 45 list, there was a 52 list.

25 Q. And when you're referring to --

1 M. KEEGAN - HIGHLY CONFIDENTIAL
2 I'm sorry.

3 A. There was another e-mail I was
4 presented earlier which is Exhibit --

5 MR. STERN: 144A.

6 A. 144A, right?

7 So it says Total securities and
8 cash received 52.19, right? That
9 theoretically is BoNY's valuation in effect of
10 the cumulative assets of what we got. It's
11 one of many evaluations they had. They had a
12 45 one. There was a 47 one floating around.
13 So, you know, at the end of the day what I was
14 trying to get a handle on was how much value
15 did we actually receive to do the repo. The
16 Fed repo. And we couldn't get it from Lehman.
17 And we couldn't get it from JPMorgan. We
18 tried to get it from BoNY but BoNY just kept
19 giving us different numbers. So I think
20 that's what he's referring to.

21 Q. And then if you look at the first
22 page of the e-mail string, the second e-mail
23 down from Robert Azerad dated Monday,
24 September 22nd and, again, it looks like you
25 are not on this but it was forwarded to you.

M. KEEGAN - HIGHLY CONFIDENTIAL

A. Off the top of my head I don't remember specifically. I do know -- I think I know what she's talking about. But I don't know what the security actually is. But it's another one of the -- it's another one of the Lehman structured finance trades where they basically were taking their loan books, turning it into AAA securities so they could post it with the Fed and get the funding.

Q. And so is that what you understand the \$1.1 with JPM to refer to at the beginning of the e-mail?

A. That JPM is holding 1.1 billion of SAS and we got 80 million of it delivered to us.

Q. Okay. I don't have anything further on that document.

Mr. Keegan, were you involved in any way in the creation of any schedules -- actually, strike that.

Were you involved in any discussions with Lehman Brothers employees regarding any schedules of unencumbered clearing box assets at DTC?

M. KEEGAN - HIGHLY CONFIDENTIAL

to take it as part of the deal, payment as part of the deal.

Q. And what did you conclude?

A. That it did have value and we should take it.

Q. And just to be clear, unencumbered box -- I'm sorry. The unencumbered assets you were referring to were at DTC?

A. I don't remember if they D -- I don't remember if they were DTC or whose assets they were. I couldn't tell you they were all DTC because I believe some of them were at JPMorgan, in fact.

I mean, I've been led to believe that the Navigator stock which to my knowledge to this day we still haven't gotten is sitting in safekeeping at JPMorgan. I have no idea if that's a fact or not.

Q. Do you recall whether you came up with a number for the valuation of these unencumbered assets?

A. No. It was kind of take it for what's on the piece of paper or don't take it. Because most of the value was in like five or

M. KEEGAN - HIGHLY CONFIDENTIAL

A. Yeah. I referred to it several times as the unpledged asset schedule. Yeah.

Q. And what was your involvement in that?

A. Friday morning, the 19th, I was called into Rich's office --

Q. And that's Rich Ricci?

A. Rich Ricci. Who was working out of the Lehman office.

And I was presented this schedule. I think it was Paolo Tonucci may have provided it to Rich and Paolo may have been in the room at the time. It was Paolo or anybody else. It was definitely a Lehman employee. And they said that this was the schedule of unencumbered assets that they could provide us, they could get -- you know, incorporate in the deal and give to us if we wanted it for the values that were indicated.

So I was asked by Rich to take a quick look at the values and try to substantiate the values and determine whether we thought this was something we thought had value or not and whether we would be willing

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six, maybe eight max, muni securities. I believe these were munies. And then Navigator. And on the muni securities we were able to go to Bloomberg and actually get a price but that for all -- you know, for all intents and purposes that was Lehman's price. So I have no idea if that was a good price or not.

But we weren't able to do much more than that with that list. And we had Navigator and, you know, the bottom line I guess is you weren't getting anything else. There wasn't anything else to give us. So we could take it or not take it.

Q. Do you recall any other assets besides the munies and the Navigator?

A. What was on that list, the list was yea thick (indicating). This might be the list for all I know.

MR. STERN: Yea thick is how thick?

THE WITNESS: An inch. Inch and a half.

A. Most of that list was comprised of

1 M. KEEGAN - HIGHLY CONFIDENTIAL
2 in the marketplace, and they do that
3 mathematical extension, that is one of the
4 several numbers that they came up with. Okay?
5 They came up with a 45 billion number.
6 There's another e-mail that talks about they
7 came up with a \$47 billion number. Another
8 e-mail talks about -- this is all in the
9 course of like, you know, six hours.

10 So, you know, I wouldn't say it's
11 a -- we didn't put a whole lot of stock in it,
12 right? So...

13 **Q. And earlier you testified that if**
14 **you could believe Bank of New York's value.**
15 **Is that what you meant by if you could believe**
16 **their value?**

17 A. Yeah. If you could believe their
18 value we would have 50 -- we would have 7
19 billion of haircut.

20 **Q. And aside from what you just**
21 **testified about the values shifting up and**
22 **down, did you have any other reason not to**
23 **believe Bank of New York's value?**

24 A. Yeah. Absolutely.

25 MR. STERN: Objection. Wait,

1 M. KEEGAN - HIGHLY CONFIDENTIAL
2 wait, wait, wait. Objection to the
3 form.

4 Can you repeat the question,
5 please, Francis?

6 (Record read.)

7 A. The only reason that -- the only
8 thing that they would be -- would competently
9 value, okay, were things like exchange traded
10 equities that were very liquid. Liquid
11 corporate debt. Treasuries. They'd probably
12 put a pretty good price on that stuff.

13 Any kind of structured paper,
14 asset-backed paper, all that stuff, they've
15 never seen it before. They haven't been
16 provided prices. They'd have no clue what
17 that really -- what that paper should really
18 be valued at. Lehman didn't have it valued
19 right.

20 **Q. Where would you go to get values**
21 **for that paper?**

22 MR. STERN: Objection to the form.

23 Can I hear that again?

24 (Record read.)

25 A. You would go to Bloomberg and

1 M. KEEGAN - HIGHLY CONFIDENTIAL
2 you'd find out what it was. If you didn't
3 what the security was you'd get the
4 prospectus, you'd take a look at it. You'd
5 see what the security was. You'd get the cash
6 remittance reports if it's an ABS security.
7 You'd look at what -- at how the security's
8 actually performing. You'd put a projection
9 of what you think cash flow is going to be out
10 of the securities and you'd value that from
11 those cash flows. That's how you come up with
12 a value.

13 **Q. Did you personally value any of**
14 **the securities transferred in the sale**
15 **transaction?**

16 A. No. I didn't value any of the
17 securities.

18 **Q. Anyone from your team do the**
19 **valuations?**

20 A. Stephen King. When you talk to
21 him about that information if you talk to him
22 he would have much -- give you much better
23 information on that than I could give you on
24 that.

25 MR. DAKIS: Nothing further.

1 M. KEEGAN - HIGHLY CONFIDENTIAL

2 MR. STERN: We'll just take a
3 break. I may have some questions.
4 Let's go off the record.

5 (Recess taken.)

6 EXAMINATION BY

7 MR. STERN:

8 **Q. Let's go back on the record.**

9 **Mr. Keegan, from your perspective**
10 **what was the purpose of the haircut in the**
11 **reverse repo that was the basis of the Fed**
12 **replacement transaction?**

13 MR. TAMBE: Objection to the form.

14 Lack of foundation.

15 **Q. Go ahead.**

16 A. So the repo -- the Fed was
17 providing financing to Lehman Brothers. It
18 was ordinary course repo. And they provided
19 haircuts that -- a repo provider takes
20 haircuts because I'm giving you cash and I'm
21 getting back a security. That security is
22 subject to market movements. It's subject to
23 liquidity risk. And if you have to liquidate
24 it will take a while to liquidate it. And
25 that haircut is supposed to be the cushion

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2 that's provided to the financier so that he
3 has a reasonable probability to recover the
4 amount of his loan from the security if the
5 counterparty defaults and can't pay it back.

6 **Q. And is that the way it's supposed**
7 **to work in a normal market?**

8 A. Well, yeah. That's the way in the
9 normal market it works. But the Fed couldn't
10 have anticipated Lehman's bankruptcy either.
11 I doubt they anticipated Lehman's bankruptcy,
12 you know, weeks ahead of time. So the
13 haircuts that they were using were traditional
14 haircuts that would be in the normal market
15 and a market that is deteriorating rapidly as
16 the market did after Lehman Brothers'
17 bankruptcy, you know, those haircuts wouldn't
18 necessarily be sufficient to protect you
19 against market movements during the period of
20 time it would take you from the time you took
21 the possession of the collateral to liquidate
22 it.

23 **Q. Now, let's turn to the period you**
24 **testified to from late on Thursday, September**
25 **18th going into Friday, September 19th.**

1 M. KEEGAN - HIGHLY CONFIDENTIAL

2 A. Yeah, I was asked by I believe
3 Rich Ricci how much did we think we might have
4 in terms of "excess value" to pay for certain
5 liabilities that Barclays was absorbing in the
6 transaction. And, you know, I thought the
7 question was -- the question was naive under
8 the circumstances.

9 And, you know, again, we couldn't
10 tell exactly what we had and didn't have at
11 that point in time. And we knew that what we
12 did have, while it was done on haircuts that
13 were -- you know, if it were a normal market
14 and they were done at haircuts that assumed
15 the securities were valued properly. I mean,
16 if they weren't valued properly, and some of
17 them were weren't valued properly, then they
18 were overvalued. And, therefore, the haircut
19 wasn't adequate to protect us against the risk
20 that was inherent in Lehman Brothers were
21 taking itself, never mind to have excess to
22 pay for liabilities.

23 **Q. Turning back to Exhibit 144A and**
24 **looking at the figures that are listed on this**
25 **document, from your perspective were any of**

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2 **Do you have that time frame in**
3 **mind?**

4 A. Okay.

5 **Q. In that time frame why from your**
6 **perspective did Barclays need an additional**
7 **value cushion beyond the repo haircut?**

8 A. I mean, the first reason why we
9 were being delivered securities that, based on
10 the prior work that we did over the weekend,
11 the prior weekend, based on the fact that we
12 didn't come to an agreement with Lehman on --
13 on adjusting the value of the securities and
14 we were getting those securities, that the
15 haircut that we were getting -- that those
16 securities that we were getting were
17 overvalued and therefore they were in effect
18 being used -- they were burning up the
19 haircut, they were using it up, and that
20 needed to be replaced.

21 **Q. Did anybody ask you if there was**
22 **any excess available through the repo?**

23 A. Yeah, we were asked --

24 MR. TAMBE: Objection to the form
25 of the question.

1 M. KEEGAN - HIGHLY CONFIDENTIAL
2 **the figures listed here reliable?**

3 MR. TAMBE: Objection to the form
4 of the question.

5 A. The repo cash amount was the cash
6 that we sent out to JPMorgan so that's a good
7 number.

8 **Q. And what is that number?**

9 A. 45 billion.

10 We thought the repo cash amount on
11 the deposit that was at JPMorgan, the 7
12 billion was a good number as well, but that
13 was ultimately taken back by JPMorgan.

14 **Q. What about the rest of the**
15 **figures?**

16 A. There'd be aspects of BoNY's
17 valuations that would be okay, but there would
18 be significant portions of it that weren't
19 which kind of takes the whole -- you know,
20 renders the whole number not reliable so...

21 **Q. Going back to the Monday,**
22 **September 15th, discussions between you and**
23 **people at Lehman concerning haircuts and**
24 **valuation adjustments on certain securities,**
25 **were there any disagreements between you and**

M. KEEGAN - HIGHLY CONFIDENTIAL
the people at Lehman?

A. This is Monday.

Q. This is on Monday the 15th.

A. Yeah. There was -- there was a number of disagreements, right? That's in part the context of the exclude list. We couldn't come to an agreement on -- we disagreed with their values. We couldn't come to an agreement on their values. So we just said, Fine, you know, you own it, you know, keep it. We won't take it so...

MR. STERN: I have no further questions.

MR. TAMBE: Just a couple of follow-up questions.

* * *

EXAMINATION BY

MR. TAMBE:

DI Q. When you took the break before your own lawyer began questioning you did you discuss the content of your testimony with your lawyer?

MR. STERN: I'm going to object and I'm going to instruct you not to

M. KEEGAN - HIGHLY CONFIDENTIAL
answer.

DI Q. Did you discuss the questions that Mr. Stern was going to ask when you came back from the break?

MR. STERN: I'm going to instruct you not to answer.

DI Q. And did you discuss with Mr. Stern the answers that you were going to give in response to those questions?

MR. STERN: Again, I'll instruct you not to answer.

Q. On the Fed repo that you testified about in response to Mr. Stern's questions, do you know what the size of the Fed financing to Lehman was the week prior to the week in question? So the week that began on the 8th of September?

A. No, I don't.

Q. And do you know what the haircut schedule was that was charged by the Fed during that week?

A. Precisely, no, I don't. If you're asking about the adjustment that week, I don't know.

M. KEEGAN - HIGHLY CONFIDENTIAL
Q. Do you know of any adjustments in the haircut schedule proposed by the Fed either on Friday, September 12th, or Monday, September 15th?

A. No.

MR. TAMBE: No further questions.

MR. STERN: I think we're done.

Off the record.

(Time Noted: 12:39 p.m.)

MIKE KEEGAN

Subscribed and sworn to before me
this ____ day of _____, 2009.

C E R T I F I C A T E
STATE OF NEW YORK)

: ss.

COUNTY OF NEW YORK)

I, FRANCIS X. FREDERICK, a Notary Public within and for the State of New York, do hereby certify:

That MIKE KEEGAN, the witness whose deposition is hereinbefore set forth, was duly sworn by me and that such deposition is a true record of the testimony given by the witness.

I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 28th day of August, 2009.

FRANCIS X. FREDERICK

1
2 UNITED STATES BANKRUPTCY COURT
3 SOUTHERN DISTRICT OF NEW YORK

4 -----x
In Re: Chapter 11
5 LEHMAN BROTHERS Case No. 08-13555 (JMP)
HOLDINGS, INC., et al., (Jointly Administered)
6 -----)

7
8 * * * HIGHLY CONFIDENTIAL * * *
9 VIDEOTAPED DEPOSITION OF ANDREW KELLER
10 New York, New York
11 Friday, January 8, 2010
12
13
14
15
16
17
18
19

20 Reported by:
FRANCIS X. FREDERICK, CSR, RPR, RMR
21 JOB NO. 27031
22
23
24
25

1 A. KELLER - HIGHLY CONFIDENTIAL
2 Emmanuel on behalf of the Official
3 Creditors Committee.

4 MS. LEE: Shinzong Lee, Simpson
5 Thacher.

6 MR. ROTHMAN: Seth Rothman from
7 Hughes Hubbard & Reed for the SIPA
8 Trustee.

9 THE VIDEOGRAPHER: Will the court
10 reporter please swear in the witness.

11 * * *

12 ANDREW KELLER, called as a
13 witness, having been duly sworn by a
14 Notary Public, was examined and
15 testified as follows:

16 EXAMINATION BY

17 MR. THOMAS:

18 Q. Good morning, Mr. Keller. Could
19 you please state your full name.

20 A. Andrew Keller.

21 Q. And have you been deposed before?

22 A. No.

23 Q. Are you familiar with how this
24 process works generally in terms of I'll be
25 asking questions and the court reporter will

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1 A. KELLER - HIGHLY CONFIDENTIAL
2 be taking down the questions and the answers
3 and so forth?

4 A. Yes.

5 Q. And if at any time you're not sure
6 of the question or what I'm trying to ask,
7 please feel free to ask me to rephrase it.
8 I'll be happy to try to do that.

9 A. Sure.

10 Q. Thanks. Can you tell me how long
11 you've been with Simpson Thacher?

12 A. I started in 1983.

13 Q. And what is your area of practice?

14 A. Corporate finance.

15 Q. And within corporate finance do
16 you have any particular specialty or area of
17 practice?

18 A. I do a combination of advising
19 clients such as Lehman in their disclosure
20 documentation. And then also do a number of
21 securities offerings and had done a number of
22 securities offerings as underwriter's counsel
23 for Lehman and various others of our investing
24 banking clients.

25 Q. Have you been involved in any

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1 A. KELLER - HIGHLY CONFIDENTIAL
2 mergers and acquisitions?

3 A. Only tangentially. M&A is not my
4 area of practice.

5 Q. And when there's mergers and
6 acquisitions and you tangentially become
7 involved, why do you get involved with those?

8 A. Actually, I could only, within at
9 least the recent past, remember this
10 particular transaction to the extent that we
11 classify it as M&A as something that I got
12 involved in. Otherwise, it would just be
13 diligencing an M&A transaction in connection
14 with a securities offering. Or if you did a
15 securities offering that was financing for an
16 acquisition. Just to understand the
17 transaction.

18 Q. And can you describe just
19 generally Simpson's kind of history with
20 working with or for Lehman Brothers?

21 A. I don't know exactly when it
22 started but it's been a long relationship with
23 the investment bank.

24 Q. Going back many years?

25 A. Yes. Long before -- it started

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1 A. KELLER - HIGHLY CONFIDENTIAL
2 long before I started at the firm. And,
3 again, typically as underwriter's counsel for
4 Lehman offerings and corporate counsel for the
5 company.

6 Q. So Simpson has done a lot of work
7 for Lehman over the years.

8 A. Yes.

9 Q. When did you first become involved
10 in any way in a possible transaction between
11 Lehman and Barclays?

12 A. That probably would have been the
13 Thursday before what unfortunately turned out
14 to be the bankruptcy filing when we got the
15 call to help with the potential sale of the
16 company.

17 Q. September 11th, 2008?

18 A. Yes.

19 Q. And what was your individual
20 personal involvement -- role with that
21 process?

22 A. I think Lehman called us to -- at
23 that point Lehman called and said that they
24 were talking to two potential buyers, Bank of
25 America and Barclays. And Sullivan & Cromwell

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1 A. KELLER - HIGHLY CONFIDENTIAL
2 had been helping Lehman over the past couple
3 of months also. And the way Lehman was going
4 to split the work was that although everybody
5 would be involved in helping -- in helping
6 Lehman, Sullivan & Cromwell would take the
7 principal responsibility for the BofA --
8 potential BofA transaction and we would do the
9 documentation for the potential sale to
10 Barclays.

11 Q. And when you say documentation you
12 also mean the legal advice concerning the
13 transaction, too, right?

14 A. Yes.

15 Q. And did that -- how did Simpson's
16 role change at all after the bankruptcy filing
17 by Lehman?

18 A. Well, we were drafting a merger
19 agreement with Barclays over that weekend, and
20 then got the call roughly sometime mid-day
21 Sunday that the deal had died for whatever
22 reason, and essentially went home at that
23 point. Sometime during the day late morning
24 that Monday I think we got a call from Lehman
25 to come over to their offices, that there was

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1 A. KELLER - HIGHLY CONFIDENTIAL
2 now another potential deal with Barclays. And
3 we showed up there and at that point already
4 there were -- at Lehman's conference room
5 floor Weil Gotshal was there representing
6 Lehman, and Sullivan & Cromwell and Clearly
7 Gottlieb representing Barclays, and many
8 people from Lehman and Barclays in many
9 conference rooms on that floor.

10 So we were called over to help
11 given our knowledge of the company and just
12 help review the documents that were being
13 drafted.

14 Q. And we'll pick up there in just a
15 minute.

16 A. Sure.

17 Q. But is it your understanding that
18 you've been designated to be Simpson's
19 30(b)(6) witness on certain topics today?

20 A. I don't even know what a 30(b)(6)
21 witness is.

22 Q. Do you understand that you've been
23 designated to give testimony on behalf of
24 Simpson on certain issues today?

25 A. Of the -- on behalf of the firm.

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1 A. KELLER - HIGHLY CONFIDENTIAL

2 Q. Yes.

3 A. Yes.

4 Q. Okay. And can I just ask what you
5 did do to prepare to give testimony today?

6 A. Just looked at a few e-mails.
7 Went over the contracts again to try to
8 refresh my memory.

9 Q. So I assume you met with your
10 counsel.

11 A. Yes.

12 Q. Did you meet with anyone other
13 than counsel or speak with anyone other than
14 counsel --

15 A. No.

16 Q. -- with respect to the deposition?
17 And -- okay. So picking up where
18 we left off, did you personally go over there
19 Monday?

20 A. Yes.

21 Q. And what did you do that first
22 day, Monday?

23 A. That Monday and Monday night we
24 essentially would -- the process would be that
25 the -- for the most part the lawyers would be

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1 A. KELLER - HIGHLY CONFIDENTIAL
2 in a room going over the contract. Lawyers
3 from both sides. Giving comments. Then the
4 contract would be turned. And we would wait
5 and then review the contract and more comments
6 back and forth. So it was just a technical
7 negotiation, drafting process.

8 Q. And Simpson was involved in that
9 drafting process of that original contract,
10 correct?

11 A. Yes.

12 Q. Let me go ahead and show you a
13 document we'll mark as -- that's been
14 previously marked as Exhibit 1.
15 (Document review.)

16 Q. Is this the ultimately executed
17 version of the contract that you were
18 referring to?

19 A. Yes. Looks like it.

20 Q. And if you don't mind for purposes
21 of the day I'll refer to this as the original
22 APA.

23 A. (Witness nods.)

24 Q. If I do so you'll understand I'm
25 referring to this document?

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1 A. KELLER - HIGHLY CONFIDENTIAL

2 A. Right.

3 Q. I'm going to give you another
4 document. This is -- let me give a document
5 marked -- previously marked as 440.

6 (Document review.)

7 Q. Do you recognize Exhibit 440?

8 A. This is --

9 MR. AMER: Are you talking about
10 the whole document, because it's
11 multiple --

12 MR. THOMAS: The whole document.
13 I'm going to ask him about one of the
14 attachments, too, but just the whole
15 document.

16 A. Yeah. As I recall, this is the
17 version that was submitted to the bankruptcy
18 court.

19 Q. When you say this is the version,
20 you're referring to the second exhibit which
21 is a version of the original Asset Purchase
22 Agreement that has a number of hand-marked
23 interlineations on it?

24 A. Which I assume then matches this
25 one.

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1 A. KELLER - HIGHLY CONFIDENTIAL
2 with the court as soon as possible and another
3 turn through the word processing was going to
4 take too long. We were on Lehman's conference
5 call and didn't quite have the word processing
6 facilities that we were typically used to or
7 that a law firm would have. So in order to
8 shorten the time to get it filed, what was
9 agreed by all the law firms was something that
10 Elizabeth just wrote in by hand in order to
11 get the filing done.

12 Q. Let me ask you to turn back to
13 Exhibit 1 which is the executed copy of the
14 original APA. And let me ask you to turn to
15 page 6 and the definition of purchased assets.

16 A. Yeah.

17 Q. And this is a document you're
18 familiar with, right, this contract?

19 A. Yes.

20 Q. Okay. The first purchased asset
21 there where it says the retained cash, do you
22 know the value of that asset as of the time
23 this document was executed?

24 Or strike that.

25 As of roughly September 16th or

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1 A. KELLER - HIGHLY CONFIDENTIAL

2 Q. And are you familiar with -- have
3 you ever seen the motion that the exhibit's
4 attached to? The sale order motion.

5 A. Not until yesterday.

6 Q. Okay. Let me ask you then about
7 Exhibit -- the version of the original Asset
8 Purchase Agreement attached. Do you know
9 whose handwriting that is showing the marks on
10 that version of the agreement?

11 A. Yes. That's Elizabeth Cooper's,
12 an associate of this firm.

13 Q. Okay. And can you just describe
14 the process by which this particular document
15 was created, the handwritten marks?

16 A. That, as I understand it -- I'm
17 not even sure that it was there at the time
18 because it would have been on the Tuesday that
19 we were there. And I went home to get some
20 sleep because it was at the point where we
21 were essentially done with the negotiations
22 and what was left was to put together the
23 filing for the bankruptcy court. And that was
24 essentially the last round of comments. And
25 people were -- it was urgent to get the filing

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1 A. KELLER - HIGHLY CONFIDENTIAL
2 September 17th.

3 A. I don't recall. I would look at
4 the definition and see whether it's spelled
5 out there.

6 (Document review.)

7 A. Now I can't find it but -- but I
8 don't recall what the value was.

9 Q. Okay. Do you recall whether there
10 was any value given or not in the contract?

11 A. I don't. I'd have to look through
12 it again.

13 Q. Okay. The second asset there
14 referring to deposits, do you know what the
15 rough value of the assets identified in
16 category B were?

17 A. No.

18 Q. Do you know the value of the
19 assets identified in category C?

20 A. No.

21 Q. How about E?

22 A. No.

23 Q. Why was -- do you know why there
24 was no values put on these various assets or
25 any total valuation placed on the assets?

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2 A. No.

3 Q. Do you know if that was an
4 important -- I mean, was that an element of
5 the deal, that certain assets be worth certain
6 amounts?

7 A. Well, I wasn't part of the
8 discussions between the principals as to
9 exactly how the deal was cut and so I can't
10 say what elements of the deal were important
11 to them.

12 Q. But since Simpson was involved in
13 the drafting up of this contract, can you
14 explain why it wasn't necessary to try to
15 total up the value of the assets and the value
16 of the liabilities?

17 A. In my experience in the M&A world
18 which is, as I said, a little limited, it does
19 not strike me as unusual that at least the
20 values of these listed assets weren't broken
21 down; that the principals would agree to
22 essentially how you define the business and in
23 an Asset Purchase Agreement lay out the
24 assets, describe the assets that are being
25 purchased, and describe the liabilities that

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2 MR. AMER: If you understand what
3 the question is.

4 A. Well, to my understanding of your
5 question, you're asking how the buyer and
6 seller -- the principals approached the deal.

7 I mean, again, I just wasn't part
8 of those conversations. And so I don't know
9 to what extent value of particular assets was
10 important or factored into the decision or
11 what discussions they had among themselves.

12 Q. Well --

13 A. At this point it was just -- from
14 my perspective just running through what
15 the -- lawyers would go back to their clients,
16 principally Weil and Clearly Gottlieb, and say
17 do we have the description of the assets that
18 are being transferred and the liabilities that
19 are being assumed correct.

20 Q. You're not aware of any reason to
21 believe that there was a disconnect between
22 Simpson and the other attorneys drafting this
23 contract and what the principals wanted, are
24 you?

25 A. Not that I know of.

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1 A. KELLER - HIGHLY CONFIDENTIAL

2 are being assumed, and that essentially is
3 what it was. But to break down each -- the
4 value of each item by item is not -- the fact
5 that it was not broken down is not unusual.

6 Q. Is it not necessary to do that
7 because the deal wasn't predicated on assets
8 having certain values or liabilities having
9 certain values?

10 A. I don't know what -- again, I just
11 don't know how the buyer and seller approached
12 the overall valuation of the business or how
13 they got to what they got. By the time we got
14 the call and were brought in that seemed to
15 have already taken place.

16 Q. And based upon the contract the
17 conclusion of that would have been that it
18 didn't matter -- the deal wasn't predicated on
19 assets having certain values or liabilities
20 having certain values, but rather that
21 Barclays was essentially buying the business?

22 MR. AMER: Objection to the form
23 of that question.

24 MR. KAY: Objection to form.

25 Q. You can answer it.

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1 A. KELLER - HIGHLY CONFIDENTIAL

2 Q. Okay. So based on how the
3 contract was drafted, at least, in terms of
4 the contract it was a deal that was not
5 predicated on assets having a certain value or
6 liabilities having a certain value; is that
7 right?

8 MR. HINE: Objection.

9 MR. KAY: Objection.

10 MR. ROTHMAN: Objection to the
11 form.

12 MR. AMER: Objection to form.

13 A. Again, I don't know on what basis
14 the principals had put this together.

15 Q. I understand. But looking at the
16 contract and the fact that there's no values
17 put on -- no values put on many of the
18 purchased assets and no values put on all the
19 liabilities, doesn't that mean to you that the
20 deal wasn't predicated on assets having a
21 certain value or liabilities having a certain
22 value?

23 MR. HINE: Object to the form.

24 MR. KAY: Join.

25 MR. ROTHMAN: Same.

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A. KELLER - HIGHLY CONFIDENTIAL

Q. You can answer.

A. Again, not necessarily because if they had -- and this is just speculating here because I wasn't part of the conversation -- but if they had put together a deal based on the values and then told the lawyers these are the types of assets and liabilities we're assuming, describe them, it could have been.

Q. Is there any provision in the contract that Simpson helped prepare that requires the assets, the value of the assets to value of the assumed liabilities?

MR. HINE: Object to the form.

A. I'm trying to think of how --

Q. Sure. You're welcome to look through the contract. If you want to take a few minutes to look through it you're welcome to.

A. Yeah.

(Document review.)

A. I'd have to spend a fair amount of time looking through the whole contract. I mean, just quickly the contract does go into the value of the long positions and the short

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A. KELLER - HIGHLY CONFIDENTIAL

positions. But there are other assets and liabilities included in the deal as a whole.

Q. So is there anything from your -- from your review, from your knowledge of the contract, from your preparation for your testimony today, do you have anything that you can identify in the contract that requires the asset -- the value of the assets to end up equalling the value of the liabilities assumed or consideration paid?

A. Just on the face of the contract I can't as of this moment. I'd have to go through it. I don't recall any provision that said that.

Q. And you're not aware of -- was this contract drafted in a fairly normal drafting process as far as you can tell?

A. Yes. Other than the fact that we had a very short period of time to do it. The normal process would have taken at least a week or maybe several weeks. But we had about a day.

Q. And each party had one or more large law firms working on the contract?

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A. Yes.

Q. And from everything you know did it appear to be a good faith arm's-length negotiating process?

A. Yes.

Q. You have no reason to believe there was a disconnect between what the principals may have agreed to and what's reflected in the contract, do you?

MR. HINE: Object to form.

A. I have no reason believe -- sorry.

Q. Go ahead and answer. Do you want to complete that answer? "I have no reason to believe" is what you said.

A. Yes. I have no reason to believe.

Q. Let me ask you to turn back to the version with handwriting on it. Exhibit 440. The version of the APA -- original APA with handwriting on it. And let me ask you to look at page 11, please.

A. (Witness complies.)

Q. Strike that.

Let me ask you to turn back to page 7 first. There's a section that begins

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on Purchased Assets on page 6 and then it carries over to page 7.

A. Right.

Q. Do you see that?

And at the top of page 7 you'll see there's a Section D that says Government securities, commercial paper -- and this is before the changes were made.

It says government securities, commercial paper, mortgage loans, corporate debt, corporate equity, exchange traded derivatives, and collateralized short-term agreements.

Do you see that?

A. Yes.

Q. And then there's some handwritten changes made including at the end there is a phrase added "...with a book value as of the date hereof of approximately \$70 billion."

Do you see that?

A. Yes.

Q. Do you know why that was added?

A. No.

Q. Do you know who added it?

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2 A. Well, again, the language -- the
3 words were actually written by Elizabeth
4 Cooper but this was a part of the negotiations
5 between the two sides and agreed to.

6 Q. And have you spoken with Ms.
7 Cooper about this edit?

8 A. No.

9 Q. Do you know if anyone at Simpson
10 has spoken with her about --

11 A. That particular edit?

12 Q. Yes.

13 A. Not to my knowledge.

14 Q. Do you know why -- do you know who
15 directed her to make that edit?

16 A. Well, it would have been a markup
17 that both sides had agreed to. And
18 essentially instead of giving it to the word
19 processor to type in somebody handed it to
20 Elizabeth to just do by hand.

21 Q. Do you know who --

22 A. She volunteered to do it.

23 Q. Do you know, was she at a meeting?
24 Where physically was she when --

25 A. She was there at the conference --

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2 at the conference room floors where everybody
3 was negotiating the agreement.

4 Q. At 745?

5 A. Yes.

6 Q. And do you know who else from
7 Simpson was there?

8 A. I was until I left that morning.
9 John Finley was there. And Alvin Brown may or
10 may not -- was at least there for part of the
11 time.

12 Q. And do you know which side or who,
13 what person, suggested this inclusion?

14 A. I don't know where it originated
15 from.

16 Q. Do you understand the inclusion to
17 be describing some subset of assets listed in
18 Section D?

19 A. I would read that to lend
20 description to what assets were covered by D.

21 Q. And is it fair to say that at
22 least one earlier version of the contract did
23 not have that language in it, that
24 description?

25 A. That's what it looks like, yes.

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2 Q. Do you have any knowledge of where
3 that \$70 billion figure came from?

4 A. No.

5 Q. Do you have any knowledge of what
6 it represents?

7 A. Well, other than reading the
8 words. Represents -- just simply that it
9 represents the book value of those long
10 positions as defined.

11 Q. Do you know -- is there a -- are
12 you aware of any defined term "book value" as
13 part of the contract?

14 A. No.

15 Q. Does book value mean one precise
16 thing or could it mean different things to
17 different people?

18 MR. HINE: Object to the form.

19 MR. AMER: I'll object to the form
20 as well.

21 Q. You can answer. They object.
22 They preserve their objection.

23 A. Right. It means one thing to me.
24 And I would assume it means the same thing to
25 others but can't speak for others.

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2 Q. Okay. Do you know if Lehman,
3 after the bankruptcy filing, the week of
4 September 15th, whether they were continuing
5 to update their marks on securities?

6 A. I do not know for a fact.

7 Q. Well, do you have any information
8 as to whether that was occurring?

9 A. Well, I would not be surprised if
10 it were. I do know from reviewing, for
11 instance, the -- some of the statements that
12 were made to the bankruptcy court that the
13 assets were in the 45, \$49 billion range. So
14 presumably people did follow the values of the
15 assets.

16 Q. Are you just speculating or do you
17 know?

18 A. I am just speculating.

19 Q. Do you know how those other later
20 numbers were calculated?

21 A. No.

22 Q. Okay. Do you have any personal
23 knowledge of any valuations of marks going on
24 that week?

25 A. No personal knowledge.

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1 A. KELLER - HIGHLY CONFIDENTIAL

2 **Q. Let me strike the personal**
3 **knowledge.**

4 A. Right.

5 **Q. Do you have any knowledge of**
6 **valuations going on that week of Lehman**
7 **securities?**

8 A. It was my impression that people
9 were discussing valuations. And that that
10 week things were changing incessantly.

11 **Q. Were the value of Lehman's**
12 **securities and other assets going down that**
13 **week?**

14 A. I would assume they were as were
15 everybody's.

16 **Q. Are you aware of, on that Monday**
17 **when you were over at Lehman, efforts by**
18 **people from Barclays and people from Lehman to**
19 **try to update valuations of the Lehman assets?**

20 A. On that Monday?

21 **Q. Yes.**

22 A. I was not aware.

23 **Q. At any other time during that week**
24 **are you aware of people from Barclays and**
25 **Lehman sitting down and trying to get together**

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2 and come up with updated values of Lehman
3 assets?

4 A. Again, I assume that that may have
5 been going on but, you know, as we progressed
6 and started talking about that clarification
7 agreement. That process. As the week
8 progressed.

9 **Q. So are you just assuming it or are**
10 **you aware of it going on?**

11 A. There was a lot going on at that
12 point in Weil's offices and certainly
13 principals of Lehman and Barclays were
14 meeting. At this point it's a little hard for
15 me to recall exactly what the discussions were
16 but it would not surprise me if this were part
17 of that.

18 **Q. I'm sorry. I don't mean to**
19 **belabor this but it wouldn't surprise you if**
20 **you were part of it, but were you actually --**
21 **was Simpson actually aware that those**
22 **discussions between Barclays and Lehman were**
23 **going on to try to update the falling values**
24 **of Lehman assets?**

25 A. I at this point don't know whether
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2 I can recall it as a fact but would assume --
3 my impression was that those conversations
4 were going on.

5 **Q. And you would have been aware of**
6 **that at the time.**

7 A. Just from milling around the
8 hallways and seeing the people.

9 **Q. Let me ask you to turn in the**
10 **executed copy of the original APA to Section**
11 **2.5, please. Take a moment to review that**
12 **section, please.**

13 (Document review.)

14 A. Okay.

15 **Q. And do you see the section**
16 **entitled cure amounts obligates the purchaser**
17 **to pay a couple different types -- or assume a**
18 **couple different types of liability, one being**
19 **cure amounts or past amounts owed on contracts**
20 **that they elect to assume and the other being**
21 **certain ordinary course amounts?**

22 A. Yes.

23 **Q. Why was there no value placed on**
24 **the liability that's being assumed here by the**
25 **purchaser?**

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1 A. KELLER - HIGHLY CONFIDENTIAL

2 MR. HINE: Object to the form.

3 A. I would think that the -- my
4 understanding was that this is typical in a
5 bankruptcy situation and as you can -- as
6 reading this paragraph as of the day of this
7 contract I could not tell you what the
8 ultimate obligation was going to be. Because
9 it's forward looking.

10 **Q. So it's impossible to know the**
11 **amount of the liability that would be assumed**
12 **by the purchaser?**

13 MR. HINE: Object to the form.

14 A. Impossible is a tough standard
15 but -- I would -- I do not know -- I mean, to
16 put an exact dollar amount on it, probably
17 not. Could somebody knowing -- having a good
18 knowledge of the business make a reasonable
19 estimate, that I don't know.

20 **Q. Well, if it's up to the discretion**
21 **of the purchaser which contracts it elects to**
22 **assume --**

23 A. Yes.

24 **Q. -- and -- couldn't the purchaser**
25 **elect to assume zero contracts and assume**

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1 A. KELLER - HIGHLY CONFIDENTIAL
2 zero?

3 A. As I understand it, yes.

4 MR. HINE: Object to the form.

5 Q. So the actual amount of the
6 liability here could be zero.

7 MR. HINE: Same objection.

8 A. It is possible, yes.

9 Q. Well, are you aware of any efforts
10 to try to require Barclays to accept certain
11 contracts or determine which -- a fortiori
12 which contracts it's going to assume?

13 A. No, I am not.

14 Q. Were you -- did you attend any of
15 the court hearings?

16 A. No.

17 Q. Did anyone from Simpson attend any
18 of the court hearings?

19 A. Not to my knowledge.

20 Q. And you made reference to
21 statements made to the court. Is that because
22 you reviewed the transcripts of those
23 hearings?

24 A. Just a couple of pages that were
25 referenced by Lori Fife to those dollar

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1 A. KELLER - HIGHLY CONFIDENTIAL
2 amounts items.

3 Q. When did you review those?

4 A. Within the past week. The past
5 two weeks.

6 MR. AMER: Just to be clear, those
7 were the pages that were referenced in
8 your 30(b)(6) notice.

9 MR. THOMAS: Sure.

10 A. So I, having read that, just asked
11 what those were.

12 Q. Were you getting -- how did
13 Simpson have an understanding of what was
14 going on in court? Was somebody reporting
15 back to Simpson?

16 MR. AMER: I'll object to the form
17 of the question.

18 A. It's not something that was being
19 formally done. We heard high-level summaries.
20 Obviously everybody was interested in what was
21 going on in court but...

22 Q. Let me ask you to turn to Section
23 8.5, please.

24 A. (Witness complies.)

25 Q. Subsection A says, "Each of seller
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2 and purchaser shall use its commercially
3 reasonable efforts to take all actions
4 necessary or appropriate to consummate the
5 transactions contemplated by this agreement."

6 Do you see that language?

7 A. Yes.

8 Q. Would that include obtaining court
9 approvals to the extent they're necessary?

10 A. Yes.

11 Q. Do you believe that Lehman
12 obtained all necessary court approvals for the
13 sale transaction that was consummated on
14 September 22nd, 2008?

15 A. Yes.

16 Q. If you would -- are you familiar
17 with a schedule drafted by Steve Berkenfeld of
18 Lehman that was referred to in this contract?

19 MR. HINE: Object to the form.

20 A. I -- yes. I was trying to think
21 of whether it was referred to in this contract
22 but I believe it was.

23 Q. But it was not an exhibit to the
24 contract, correct?

25 MR. HINE: Object to the form.

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1 A. KELLER - HIGHLY CONFIDENTIAL
2 A. Yeah. I don't believe that it
3 was.

4 Q. Were -- and I think we're going to
5 have another witness on compensation issues,
6 but were you involved in calculating any
7 potential compensation liabilities being
8 assumed by purchaser?

9 A. No.

10 Q. Mr. Brown would be more
11 knowledgeable about that?

12 A. He may be.

13 Q. Did you attend any LBI or LBHI
14 board meetings during this week?

15 A. The only one I attended was the
16 morning -- I think it was the morning we
17 signed this contract or were about to sign the
18 contract.

19 Q. By the way, if at any time you
20 want to take a break just speak up.

21 A. Sure.

22 Q. Let me go ahead and show you a
23 document that's been previously marked as 489.
24 Please take a moment to review that.

25 (Document review.)

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1 A. KELLER - HIGHLY CONFIDENTIAL

2 A. Okay.

3 Q. Is this the board meeting you
4 attended?

5 A. Yes.

6 Q. The notes from the board meeting
7 you attended.

8 If you would turn to page 3,
9 please.

10 A. (Witness complies.)

11 Q. At the second paragraph it reads,
12 "Mr. Roberts resumed by describing that it is
13 a condition to the transaction that eight
14 specific firm employees enter into employment
15 agreements with Barclays. He stated that Mr.
16 McGee was one of those employees so interested
17 firm employees were involved in the
18 transaction negotiations on behalf of the
19 firm."

20 Do you see that?

21 A. Yes.

22 Q. Were you aware at this time that
23 certain employees were negotiating employment
24 contracts -- certain Lehman employees that
25 were also involved in the transaction

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1 A. KELLER - HIGHLY CONFIDENTIAL
2 what is referred to as interested firm
3 employees --

4 A. Yes.

5 Q. -- negotiating the transaction at
6 the same time they were also negotiating
7 employment and bonus agreements with Barclays.

8 A. Yes.

9 (Pause on the record.)

10 Q. Any time I pause I'm skipping over
11 documents so we're actually gaining time.

12 A. That's good.

13 MR. AMER: Pause away.

14 A. Pause away, yeah.

15 Q. Let me show you a document we'll
16 mark as 519.

17 (Deposition Exhibit 519, document
18 bearing production number STB 09637,
19 marked for identification as of this
20 date.)

21 BY MR. THOMAS:

22 Q. Do you recognize this document as
23 a --

24 A. I don't recall it. But...

25 Q. It's a document produced by

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1 A. KELLER - HIGHLY CONFIDENTIAL
2 negotiations were also negotiating employment
3 transactions with Barclays?

4 A. Yes.

5 Q. Did that strike you as odd or
6 inappropriate or problematic in any way?

7 A. As Mr. Roberts pointed out it was
8 something to point out to people as a
9 potential conflict. But seemed given the
10 circumstances unavoidable.

11 Q. And were part of the circumstances
12 the need for Barclays, if they were going to
13 buy the business, to try to retain the
14 employees that made up the business they were
15 buying from Lehman those that they thought
16 were particularly valuable and important to
17 it?

18 A. At least those that they deemed
19 valuable.

20 Q. So given the circumstances was
21 there any way to avoid that situation?

22 MR. HINE: Object to the form.

23 A. Not that I know of.

24 Q. So the board and Weil and Simpson
25 were aware of the situation with respect to

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1 A. KELLER - HIGHLY CONFIDENTIAL
2 Simpson Thacher. You can tell by the Bates
3 stamps down below. And it appears to be an
4 e-mail from you to James Killerlane and Edgar
5 Lewandowski, dated September 17th, 2008.

6 A. Yes.

7 Q. And you don't have any reason to
8 doubt that this is one of -- an e-mail from
9 you, do you?

10 A. No.

11 Q. Your message says, "LBHI guarantee
12 is still full and unconditional and LBI is now
13 in bankruptcy or soon will be."

14 Can you explain what you're
15 referring to?

16 A. I can explain at least part of it.
17 I would have to think a little bit more about
18 the second part. The -- Jim's question -- I
19 assume he was just at that point looking at
20 what ongoing filings LBHI and LBI might have
21 to make with the SEC. There was LBI debt
22 issued, that had been issued publicly. So
23 your starting point is that that company then
24 has to make public filings with the SEC,
25 10-Ks, 10-Qs, et cetera.

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1 A. KELLER - HIGHLY CONFIDENTIAL
2 e-mail change -- chain.

3 A. Mr. Lewkew sent an e-mail asking
4 about the -- I assume what the exact nature of
5 the assets and the liability in the contract
6 are.

7 **Q. Were there difficulties that week
8 in identifying Lehman assets, what they
9 actually had and didn't have?**

10 A. As I -- as I understand it now,
11 and I can't remember how much of this I was
12 aware of at the time or, you know, from having
13 read things subsequently, but with everything
14 going on for the Lehman bankruptcy and the
15 markets generally, that lots of their
16 customers were backing out of contracts,
17 grabbing assets, all sorts of things. So --
18 so if there were difficulties, again that
19 wouldn't surprise me.

20 **Q. Let me go ahead and show you a
21 document we'll mark as 523.**

22 (Deposition Exhibit 523, document
23 bearing production number WGM-LEHMAN-E
24 00020028, marked for identification as
25 of this date.)

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1 A. KELLER - HIGHLY CONFIDENTIAL
2 BY MR. THOMAS:

3 **Q. Whoop. Excuse me. Let me take
4 that back. I marked...**

5 (Pause on the record.)

6 **Q. Let me show you a document marked
7 as 523.**

8 (Document review.)

9 **Q. Do you recognize this as an e-mail
10 from John Finley in which you're copied dated
11 September 18th, 2008?**

12 A. Yes.

13 **Q. And the lower e-mail, earlier in
14 time e-mail from Weil attaches a draft
15 clarification letter for discussion. And then
16 Mr. Finley writes back, "Consider at what
17 point the changes would be significant enough
18 that you would want to run through the board."**

19 **Do you see that?**

20 A. Yes.

21 **Q. Were there any further board
22 meetings of LBHI or LBI after the one you
23 attended?**

24 A. I don't know.

25 **Q. To your knowledge were there? Not**
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1 A. KELLER - HIGHLY CONFIDENTIAL
2 that you're aware of.

3 A. To my knowledge, no.

4 **Q. Is it fair to say that Simpson was
5 giving consideration to the issue of whether
6 any changes were significant enough to have to
7 bring them back to the board?**

8 **MR. HINE: Object to the form.**

9 A. From -- certainly from this e-mail
10 one could see that since changes were made --
11 were being made to the agreement that it is
12 something that people should consider. But as
13 John stated here, Weil is closer to what
14 discussions had been had with the board and
15 the agreement. He's in a better position to
16 make that judgment. At least in our view.

17 **Q. Although, Simpson did attend the
18 board meeting on the sale transaction.**

19 A. Yes. But presumably there were
20 discussions with the board before that that we
21 were not part of.

22 **Q. Well, are you aware of any
23 determination by anyone at Simpson or Weil
24 that any of the changes being made to the sale
25 transaction were significant enough to require**

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1 A. KELLER - HIGHLY CONFIDENTIAL
2 going back to either the LBHI or LBI board?

3 MR. HINE: Can we just hold on
4 second? Can we get a time frame here?
5 You're talking about before -- because
6 we do have a privilege waiver issue
7 here. You're asking him at the time,
8 right? In other words, there was -- you
9 appear to be bordering on what could be
10 privileged issues if it's after
11 September 30th.

12 MR. THOMAS: I think I understand
13 your question -- your point.

14 MR. HINE: And just before you
15 correct it, the witness, I just want to
16 warn you, there's a limited waiver of
17 privilege here but it extends up to
18 September 30th only. So to the extent
19 you're learning things after that that
20 are privileged you're not authorized to
21 waive the privilege. But I think you
22 understand my point, Todd.

23 MR. ROTHMAN: Please note my
24 objection to the question.

25 BY MR. THOMAS:

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1 A. KELLER - HIGHLY CONFIDENTIAL

2 Q. Are you aware of any determination
3 by anyone at Simpson or Weil Gotshal prior to
4 September 30th that any of the changes that
5 were being made to the sale transaction after
6 September 16th were significant enough to
7 require going back to either the LBHI or LBI
8 boards?

9 A. No.

10 Q. Let me going ahead and show you a
11 document we'll mark as -- strike that.

12 Let me show you a document we'll
13 mark as 524.

14 (Deposition Exhibit 524, document
15 bearing production numbers WGM-LEHMAN-E
16 00014009 through WGM-LEHMAN-E 00014029,
17 marked for identification as of this
18 date.)

19 MR. THOMAS: And let me also show
20 you a document we'll mark as 525.

21 (Deposition Exhibit 525, document
22 bearing production numbers WGM-LEHMAN-E
23 00006149 through WGM-LEHMAN-E 00006168,
24 marked for identification as of this
25 date.)

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1 A. KELLER - HIGHLY CONFIDENTIAL

2 (Document review.)

3 BY MR. THOMAS:

4 Q. Let me start with 525 which is an
5 e-mail from -- Robert Messineo?

6 A. Messineo.

7 Q. Messineo. Is he at Weil Gotshal?

8 A. Yes.

9 Q. And it's to a number of folks
10 including yourself dated September 20th, 2008,
11 2:38 p.m.

12 Do you see that?

13 A. Yes. That was Saturday.

14 Q. Okay. That was Saturday.
15 And then looking at 424 -- strike
16 that.

17 On 525 it's sending you the latest
18 version of the clarification letter.

19 A. Um-hum.

20 Q. And then Exhibit 524 you're being
21 sent another more updated version of the
22 clarification letter showing changes being
23 made; is that right?

24 A. Yes.

25 Q. Is this consistent with your prior

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1 A. KELLER - HIGHLY CONFIDENTIAL

2 testimony that you remained involved in the
3 sale transaction, negotiation, drafting
4 process throughout that weekend?

5 A. Yes.

6 Q. Let me show you a document we'll
7 mark as 526.

8 (Deposition Exhibit 526, document
9 bearing production numbers WGM-LEHMAN-E
10 00002784 through WGM-LEHMAN-E 00002786,
11 marked for identification as of this
12 date.)

13 BY MR. THOMAS:

14 Q. This is an e-mail from Steve
15 Berkenfeld to yourself copying -- and other
16 people at -- excuse me. This is an e-mail
17 from Steve Berkenfeld to yourself and two
18 attorneys at Weil dated September 20th, 2008,
19 2:50 p.m.

20 Do you recognize it as such?

21 A. Yes.

22 Q. And do you see an e-mail in the
23 chain from you to Mr. Berkenfeld asking the
24 question whether certain changes to the
25 clarification letter would require the

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1 A. KELLER - HIGHLY CONFIDENTIAL

2 Trustee's approval?

3 A. Yes.

4 Q. Was it your understanding that the
5 Trustee or representatives of the Trustee were
6 also involved in the drafting and negotiation
7 of the clarification letter?

8 MR. ROTHMAN: Objection to form.

9 A. It was my understanding that they
10 were there but it depends what you mean by
11 involved in the drafting. They were not
12 involved in the drafting to it.

13 Q. Were they involved in the
14 discussions about it?

15 Strike that.

16 When you say "there" do you mean
17 physically at Weil Gotshal's office where --

18 A. Physically at Weil.

19 Q. And that's where the clarification
20 letter was being finalized.

21 A. Yes. But I was not aware of any
22 direct conversations with the Trustee.

23 Q. Is it your recollection that the
24 parties had agreed to the terms of the changes
25 to the APA just prior to the Friday night sale

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1 A. KELLER - HIGHLY CONFIDENTIAL
2 hearing but that the documentation had not
3 been finalized?

4 MR. HINE: Object to the form.

5 **Q. And that process continued?**

6 MR. ROTHMAN: Join in the
7 objection.

8 A. Sorry. Could you repeat the
9 question?

10 **Q. Sure. Do you recall generally**
11 **that the parties had reached agreement on**
12 **Friday about changes to the deal prior to the**
13 **court hearing but that then the actual**
14 **drafting and finalization of the document**
15 **continued over the weekend?**

16 MR. HINE: Object to the form.

17 MR. KAY: Object.

18 MR. ROTHMAN: Objection.

19 A. Again, our role was more -- more
20 of a back seat. I was not aware of the direct
21 conversations between the principals. And
22 then the letter would come first to Weil and
23 to Cleary and then through them to us. But --
24 so to what extent people had agreed to the
25 deal as of a particular point in time is very

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1 A. KELLER - HIGHLY CONFIDENTIAL
2 difficult for me to say.

3 **Q. So Simpson -- part of Simpson's**
4 **role was once it heard or was informed about**
5 **the terms, to make sure that the contract**
6 **document -- documents reflected the agreement**
7 **of the principals, correct?**

8 MR. HINE: Object to the form.

9 A. At least to the extent we
10 understood what that was, yes. Or raise
11 questions or at least assist where we could.

12 **Q. And here where you raised a**
13 **question concerning the Trustee's approval, is**
14 **it fair to say Simpson was conscious of making**
15 **sure that everyone who needed to agree agreed**
16 **to the deal?**

17 MR. HINE: Object to the form.

18 MR. ROTHMAN: Objection.

19 A. I'm sorry. Repeat the question
20 again.

21 **Q. Is it fair to say that Simpson was**
22 **conscious of making sure that any approvals or**
23 **agreements necessary for the deal were**
24 **obtained?**

25 MR. HINE: Same objection.

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1 A. KELLER - HIGHLY CONFIDENTIAL
2 A. At least where we could think of
3 what approvals might be necessary or ask if
4 approvals were necessary.

5 **Q. Was there ever a time when you**
6 **concluded that a necessary approval was not**
7 **obtained?**

8 A. No.

9 **Q. And were you over at Weil that**
10 **weekend, Saturday, Sunday?**

11 A. Yes. Both days.

12 **Q. Was anyone from the Trustee there?**

13 A. My understanding was that somebody
14 from -- a representative of the Trustee was
15 there but...

16 **Q. That someone from Houlihan? Or**
17 **excuse me.**

18 MR. KAY: Hughes Hubbard.

19 MR. THOMAS: Hughes Hubbard.

20 A. That I don't recall.

21 **Q. And was anyone from the Creditors**
22 **Committee there or any representatives of the**
23 **Creditors Committee?**

24 A. I believe that they were, yes.

25 **Q. So you were there and the best of**

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1 A. KELLER - HIGHLY CONFIDENTIAL
2 your recollection is that the Trustee and the
3 Creditors Committee were also represented by
4 someone there.

5 A. Yes.

6 **Q. And were the Creditors Committee**
7 **and Trustee representatives participating in**
8 **discussions with other parties?**

9 MR. ROTHMAN: Objection to the
10 form.

11 MR. KAY: Same objection.

12 A. Not -- well, I had no direct
13 knowledge, but since they were there -- but at
14 least for the meetings that we were a part of,
15 that was just among the law firms, Cleary,
16 Weil, going over the agreements. They were
17 not in the room with us.

18 **Q. Were any -- so there was a**
19 **separate room where attorneys were having**
20 **discussions?**

21 A. Yes. There were many separate
22 conference rooms. And the attorneys would
23 often meet in one.

24 **Q. And do you know whether one of the**
25 **attorneys there was from Hughes Hubbard?**

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1 A. KELLER - HIGHLY CONFIDENTIAL

2 MR. THOMAS: We have to change
3 tapes so why don't we go ahead and take
4 a break.

5 MR. AMER: Okay.

6 THE VIDEOGRAPHER: The time is
7 11:17. We're going off the record.
8 (Recess taken.)

9 THE VIDEOGRAPHER: The time is
10 11:27. We're on the record.

11 BY MR. THOMAS:

12 **Q. Let me go ahead and show you a**
13 **document that's previously been marked**
14 **Exhibit 25.**

15 **Actually, can I see that document**
16 **for a moment?**

17 A. Sure. (Handing.)

18 **Q. Do you recognize that as the**
19 **letter agreement or clarification letter that**
20 **the parties were finalizing over the weekend**
21 **of September 20th and September 21st?**

22 A. Yes.

23 **Q. And you received a -- in addition**
24 **to the revisions going on over the weekend,**
25 **you also received a copy of the final version**

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1 A. KELLER - HIGHLY CONFIDENTIAL
2 of this at the time, correct?

3 A. Yes.

4 **Q. Let me show you a document**
5 **previously marked as Exhibit 464A.**
6 **(Document review.)**

7 **Q. I'm going to ask you a number of**
8 **questions about the document but using the**
9 **document as more of a prop for the questions**
10 **than anything else, it's an e-mail from**
11 **someone at Alvarez & Marsal. What was Alvarez**
12 **& Marsal's role during this week at Lehman?**

13 A. During which week?

14 **Q. The week of September 15th. Do**
15 **you recall generally?**

16 A. I don't recall them in the
17 process.

18 **Q. Okay. Do you recall Mr. Marsal**
19 **being appointed chief restructuring officer**
20 **shortly after the bankruptcy filing?**

21 A. Yes. But I don't remember exactly
22 when I knew that.

23 **Q. This is an e-mail chain that's**
24 **entitled, "Here's all we have at the moment**
25 **that makes an effort to describe what Barclays**

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1 A. KELLER - HIGHLY CONFIDENTIAL
2 got, didn't get."

3 And let me ask you to turn to page
4 3, please.

5 A. The first page of --

6 **Q. The third page which is 2293.**

7 A. Yes.

8 **Q. Under Purchased Assets it reads,**
9 **"At the closing Barclays acquired all**
10 **purchased assets..." and then it goes on to**
11 **list various assets. Under Securities and**
12 **Trading Operations it says "The securities set**
13 **forth on Schedule A to the clarification**
14 **letter i.e., the securities subject to the**
15 **Barclays repurchase agreement."**

16 A. Um-hum.

17 **Q. Was that consistent with your**
18 **understanding that as part of the final deal**
19 **Barclays was getting all of the repo**
20 **collateral?**

21 MR. HINE: Object to the form.

22 MR. ROTHMAN: Same objection.

23 A. Yes.

24 **Q. And that's something that you and**
25 **Simpson were aware of prior to the closing of**

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1 A. KELLER - HIGHLY CONFIDENTIAL
2 the deal, correct?

3 MR. HINE: Object to the form.

4 A. To the extent that the letter
5 talks about the Barclay repo, yes. We were
6 not aware of the process by which that came
7 about, that happened outside of our
8 involvement.

9 **Q. But you're aware as part of the**
10 **clarification letter all of the repo**
11 **collateral was being transferred to Barclays**
12 **as part of the sale transaction, correct?**

13 MR. HINE: Object to the form.

14 MR. ROTHMAN: Objection.

15 A. Or that it had -- had it stepped
16 into that repo transaction in doing that,
17 would get these assets.

18 **Q. So as part of the sales**
19 **transaction all of the repo collateral would**
20 **be transferred to Barclays, correct?**

21 MR. HINE: Same objection.

22 MR. ROTHMAN: Objection.

23 MR. AMER: I'll object to the form
24 of the question.

25 **Q. And you're welcome to refer back**

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Page 78	Page 79
<p>1 A. KELLER - HIGHLY CONFIDENTIAL</p> <p>2 Q. You don't -- you don't</p> <p>3 specifically recall any limitation on the</p> <p>4 exchange traded derivatives?</p> <p>5 A. I do not recall.</p> <p>6 Q. And you don't see any limitation</p> <p>7 in the clarification --</p> <p>8 A. Not any express limitation.</p> <p>9 Q. Do you see any implied limitation?</p> <p>10 A. Well, only to the extent that the</p> <p>11 word "all" is used.</p> <p>12 Q. The parenthetical that says -- the</p> <p>13 parenthetical that's in the clarification</p> <p>14 letter, (ii), part C --</p> <p>15 A. Um-hum.</p> <p>16 Q. -- and any property that may be</p> <p>17 held to secure obligations under such</p> <p>18 derivatives, do you understand that to be</p> <p>19 referring to collateral associated with the</p> <p>20 exchange traded derivatives?</p> <p>21 MR. ROTHMAN: Objection to the</p> <p>22 form.</p> <p>23 A. Yes.</p> <p>24 Q. And that would be referring to all</p> <p>25 collateral, whether it were securities or cash</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 A. KELLER - HIGHLY CONFIDENTIAL</p> <p>2 or some other type of collateral?</p> <p>3 MR. HINE: Object to the form.</p> <p>4 MR. ROTHMAN: Objection.</p> <p>5 A. I would read the words "any</p> <p>6 property" referring back to such derivatives,</p> <p>7 yes. Collateral for such derivatives.</p> <p>8 Q. Which would include securities and</p> <p>9 cash and any other type of property?</p> <p>10 MR. ROTHMAN: Same objection.</p> <p>11 A. Any property.</p> <p>12 Q. I'm sorry. Was that yes?</p> <p>13 A. I would read property to include</p> <p>14 cash.</p> <p>15 Q. And is that consistent with your</p> <p>16 reading of it at the time?</p> <p>17 A. Yes.</p> <p>18 Q. Let me turn back to Exhibit 464A</p> <p>19 and the eighth page, AM 2296.</p> <p>20 A. Yes.</p> <p>21 Q. And -- we're actually still --</p> <p>22 there's a number of pages that are still under</p> <p>23 the subheading on 2293 that says Purchased</p> <p>24 Assets. And we're under the sub-subheading of</p> <p>25 customer accounts which is the bottom of 2295.</p> <p>TSG Reporting - Worldwide 877-702-9580</p>
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<p>1 A. KELLER - HIGHLY CONFIDENTIAL</p> <p>2 Do you see the bullet point at the</p> <p>3 top of the page that says Purchaser shall</p> <p>4 receive...and then the second subpart there</p> <p>5 says "...to the extent permitted by applicable</p> <p>6 law and as soon as practicable after closing,</p> <p>7 769 million of securities as held by or on</p> <p>8 behalf of LBI on the date hereof pursuant to</p> <p>9 Rule 15(c)3-3 of the Securities Exchange Act</p> <p>10 of 1934 as amended or securities of</p> <p>11 substantially the same nature and value"?</p> <p>12 Do you see that?</p> <p>13 A. Yes.</p> <p>14 Q. Do you understand that to mean</p> <p>15 that to the extent permitted by law there's</p> <p>16 769 million of 15(c)3 securities would be</p> <p>17 transferred to Barclays as part of this</p> <p>18 transaction, or if not permitted by law then</p> <p>19 securities of substantially the same nature</p> <p>20 and value would be transferred?</p> <p>21 MR. HINE: Objection to the form.</p> <p>22 MR. KAY: Objection.</p> <p>23 MR. ROTHMAN: Objection to the</p> <p>24 form.</p> <p>25 MR. HINE: Also caution the</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 A. KELLER - HIGHLY CONFIDENTIAL</p> <p>2 witness that if he's -- in answering</p> <p>3 that question you have to rely on any</p> <p>4 kind of privileged information</p> <p>5 post-dating September 30th, you're not</p> <p>6 allowed to reveal it.</p> <p>7 A. I had not focused on that question</p> <p>8 and reading it now the language is ambiguous</p> <p>9 to me. I could read it either way.</p> <p>10 Q. What is the other way?</p> <p>11 A. The other way being you have to</p> <p>12 transfer value to the extent you can by</p> <p>13 applicable law of 769 million of securities</p> <p>14 held pursuant to 15(c)3-3 or other securities</p> <p>15 of substantially the same nature and value.</p> <p>16 So that hypothetically if you</p> <p>17 could only transfer 500 million you transfer</p> <p>18 either 500 million held pursuant to 15(c)3-3</p> <p>19 or 500 million of securities of substantially</p> <p>20 the same nature or value is the other way I</p> <p>21 could read that.</p> <p>22 Q. What would be -- in that reading</p> <p>23 what would be the meaning of the second</p> <p>24 clause? Because obviously no seller is going</p> <p>25 to gratuitously --</p> <p>TSG Reporting - Worldwide 877-702-9580</p>

A. KELLER - HIGHLY CONFIDENTIAL

MR. ROTHMAN: Objection to form.

MR. HINE: Objection to form.

MR. AMER: I'm going to object because I think you can only get at what his understanding was at the time.

MR. THOMAS: Okay.

Q. What -- was it your understanding at the time as part of the sale transaction 15(c)3 assets were being transferred to Barclays?

A. I do not know exactly what 15(c)3-3 assets are. It's not an area of the business that I'm familiar with. My understanding on this particular clause as a general matter was to the extent that LBI held customer assets and the business moved over to Barclays, those customer assets had to move over in order to keep doing business with the customers. They weren't really anyone's assets since they were the customers' assets but the people and the business running it were moving over to Barclays.

Q. Let me go ahead and show you a document we'll mark as 527.

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A. KELLER - HIGHLY CONFIDENTIAL

(Deposition Exhibit 527, Lehman

Brothers Holdings, Inc. Form 8-K, marked for identification as of this date.)

BY MR. THOMAS:

Q. Before I do that, let me ask you one other question.

A. On the same page?

Q. Let's go back to 2293. The clearance box assets.

A. Um-hum.

Q. Do you know -- or do you have an understanding -- did you have an understanding of whether those assets identified there would have been transferred to Barclays as part of the original APA agreement?

MR. ROTHMAN: Objection to form.

Q. You're welcome to refer back to the agreement.

MR. HINE: Objection to form.

A. That might take a while.

(Document review.)

A. I don't recall the clearance boxes being referred to in the APA. That said, again, this is an area that -- of the business

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A. KELLER - HIGHLY CONFIDENTIAL that I wasn't as familiar with. The part of the normal trading operations which is something we didn't typically get involved with. So if someone else were to read the contract to include them, in my mind this was one of those things I would have expected to see as a clarification because this was drafted in one day.

Q. This being the original APA?

A. Yes.

Q. Let me show you a document we'll mark as 527.

(Document review.)

Q. Do you recognize this document?

A. Yes.

Q. Would you describe what it is, please?

A. I'm sorry?

Q. Would you describe what it is, please?

A. It's an 8-K that Lehman Brothers Holding as a public reporting company had to file under the 8-K given the entry into the Asset Purchase Agreement as a material

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A. KELLER - HIGHLY CONFIDENTIAL

contract.

Q. And let me show you a document we'll mark as 528 in connection with this.

(Deposition Exhibit 528, document bearing production numbers STB 07579 through STP 07582, marked for identification as of this date.)

BY MR. THOMAS:

Q. 528 is an e-mail chain dated September 22nd e-mail chain. It includes e-mails to and from yourself.

A. Um-hum.

Q. Do you recognize it as such?

A. Yes.

Q. And in your e-mail you're asking about "Has the agreement with Alvarez & Marsal been approved by the bankruptcy court, or is it still subject to that approval (as we say in this draft 8-K)?"

Do you see that?

A. Yes.

Q. You were involved in the drafting of the 8-K?

A. Yes. Reviewing it.

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1 A. KELLER - HIGHLY CONFIDENTIAL

2 Q. And did you offer -- did Simpson
3 review and revise the document before it was
4 issued?

5 A. They certainly reviewed and
6 commented. I don't recall who was actually
7 the draftsman.

8 Q. But Simpson would have reviewed
9 it --

10 A. Yes.

11 Q. -- to make sure it was accurate
12 and appropriate?

13 A. Yeah.

14 Q. And if you would turn back to the
15 actual 8-K itself.

16 A. (Witness complies.)

17 Q. There's a description -- looking
18 at the first two paragraphs, it says Asset
19 Purchase Agreement with Barclays, Inc. And
20 about half way down the first paragraph it
21 says, "In addition, Lehman and Barclays
22 entered into a letter agreement dated as of
23 September 20th, 2008 (the letter agreement and
24 together with the original agreement in the
25 first amendment the Asset Purchase

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1 A. KELLER - HIGHLY CONFIDENTIAL

2 court's approval of the transaction came late
3 on the night of Friday, September 19th, or
4 early in the morning of --

5 A. It would have been early morning
6 of the 20th, yes.

7 Q. Okay. You knew that.

8 And you knew at that time the
9 clarification letter had not been finalized,
10 at least in writing, correct?

11 A. Correct.

12 Q. And you knew that there was --
13 that the clarification eventually was --
14 letter was finalized on the morning of
15 September 22nd, correct?

16 A. Yes.

17 Q. And --

18 MR. HINE: Object to the form.

19 Q. -- you knew there was no further
20 approval of the sale documents including the
21 clarification letter after September -- the
22 early morning hours of September 20th,
23 correct?

24 A. I did not know of any others.

25 Q. You didn't believe there was any

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1 A. KELLER - HIGHLY CONFIDENTIAL

2 Agreement)."

3 Do you see that language?

4 A. Yes.

5 Q. And was that in fact an accurate
6 description of the documents that constituted
7 the transaction?

8 A. Yes.

9 Q. And in the second paragraph at the
10 end it notes that the bankruptcy court granted
11 the sale on September 20th, 2008.

12 Do you see that?

13 A. Yes.

14 Q. And was it your view that the sale
15 that was granted was the sale divined by the
16 agreements identified in the prior paragraph?

17 MR. HINE: Objection to form.

18 MR. ROTHMAN: Same objection.

19 A. That is my understanding, although
20 I wasn't involved, as I said, with the
21 bankruptcy court proceeding so I don't know
22 what was described and actually approved.

23 Q. You had no reason to believe that
24 the sale -- strike that.

25 You knew that the bankruptcy

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1 A. KELLER - HIGHLY CONFIDENTIAL

2 other court hearing or approval process?

3 A. Was not aware.

4 MR. KAY: Object to the form.

5 Q. Did anyone -- did Simpson or
6 anyone else, any other party, to your
7 knowledge, express any belief that any further
8 court approval of the clarification letter or
9 sale transaction was necessary?

10 A. I don't know of anyone at Simpson
11 that did but I can't speak for others but
12 that's something I would have assumed Weil was
13 responsible for.

14 Q. But you were at Weil during the
15 negotiations of the clarification letter and
16 to your knowledge no one took the position
17 that any further court approval was needed for
18 the clarification letter, correct?

19 A. I don't recall anyone taking that
20 position.

21 Q. And in the subsequent week after
22 the closing of the deal, do you recall anyone
23 at Simpson or otherwise expressing that point
24 of view that further court approval was
25 necessary?

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1 A. KELLER - HIGHLY CONFIDENTIAL

2 A. No.

3 Q. Let me ask you to turn the page to
4 page 3 of the 8-K.

5 MR. HINE: You said the 8-K or the
6 APA?

7 MR. THOMAS: 8-K.

8 MR. HINE: Okay.

9 Q. And under Key Assets Sold By
10 Lehman, do you see that section?

11 A. Yes.

12 Q. It says, "Lehman's United States
13 and Canadian investment banking and capital
14 markets business."

15 Do you see that?

16 A. Yes.

17 Q. Is that consistent with your view
18 of this transaction that it was essentially a
19 sale of a business?

20 A. Yes. In the broadest -- in the
21 broad sense.

22 Q. And that same bullet point at the
23 end it says Barclays also acquired certain
24 securities of LBI as part of its trading
25 operations.

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1 A. KELLER - HIGHLY CONFIDENTIAL

2 A. It says that, yes.

3 Q. Now, why were there no dollar
4 amounts given with respect to assets acquired
5 or liabilities assumed?

6 MR. AMER: In the 8-K?

7 MR. THOMAS: In the 8-K.

8 THE WITNESS: Right.

9 MR. THOMAS: Or the sale
10 transaction or anything else. The 8-K.

11 A. For purposes of 8-K dislocation we
12 wanted to describe the transaction in all
13 material respects but that means more
14 generally. So it wouldn't necessarily have
15 needed to get into specific dollar values. We
16 talk about the sale of the businesses.

17 Q. The specific dollar values or
18 estimates would not have been a material
19 disclosure for this purpose.

20 MR. HINE: Object to the form.

21 MR. AMER: Object to the form of
22 the question.

23 A. Not in our view.

24 Q. Do you know if it would have been
25 possible the week of September 15th to have

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1 A. KELLER - HIGHLY CONFIDENTIAL
2 come up with an accurate valuation of Lehman's
3 assets?

4 A. I do not.

5 Q. At any point were you ever told or
6 otherwise informed that either of the parties
7 intended for the value of assets to end up
8 being exactly equal to the value of assumed
9 liabilities?

10 MR. AMER: Can we just put a limit
11 on that, up through September 30?

12 MR. THOMAS: Sure.

13 A. I'm not quite sure in what context
14 you're asking the question. For the overall
15 transaction or -- I mean, there is certainly
16 the --

17 Q. The overall transaction.

18 A. Yeah. The overall transaction,
19 no. You know, if -- I mean, just very
20 theoretically if assets equals liabilities --
21 well, again, it depends how you look -- for
22 the overall transaction, no.

23 Q. And would that have been possible
24 without knowing what the value of the assets
25 were or would be at closing or the value of

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1 A. KELLER - HIGHLY CONFIDENTIAL
2 the assumed liabilities since some of them
3 would be assumed in the future or conditioned
4 on Barclays' election?

5 MR. HINE: Object to the form.

6 MR. AMER: Objection to the form
7 of the question.

8 A. I don't know what you mean by
9 would it have been possible. If somebody
10 wanted to do the deal that way and certain
11 assets or liabilities had to be estimated then
12 they would come up with their best estimate.

13 Q. But in terms of -- in a situation
14 like this where the value of certain Lehman
15 assets couldn't be estimated and value of
16 certain liabilities wasn't known, in your view
17 would it have been possible to structure this
18 in a way that required that the value of
19 assets have to equal value of liabilities as
20 of a particular closing?

21 MR. HINE: Objection to form.

22 MR. KAY: Same objection.

23 MR. AMER: Objection to the form
24 of the question.

25 MR. ROTHMAN: Join the objection.

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1 A. KELLER - HIGHLY CONFIDENTIAL
2 A. I suppose that could be said.
3 It's a matter of degree. Depending on the
4 business. But for any business that you sell,
5 people may have different views on assets and
6 liabilities.

7 **Q. At any point did Simpson consider**
8 **putting a true-up provision into the agreement**
9 **as a way of after the fact trying to balance**
10 **out value of assets and value of liabilities?**

11 MR. HINE: Object to the form.

12 A. No not to my knowledge.

13 **Q. So just to be clear, at no point**
14 **were you told that the deal was supposed to**
15 **be -- it was supposed to somehow be predicated**
16 **upon or involve the value of assets ultimately**
17 **equalling the value of liabilities?**

18 MR. HINE: Object to the form.

19 A. I'm unclear as to the exact
20 meaning of the question. There's certainly a
21 portion of the business that was sold that's
22 referred to as the matched book. But that was
23 part of the assets and liabilities. That was
24 sort of viewed generally my understanding was
25 as assets equals liabilities. But that was

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1 A. KELLER - HIGHLY CONFIDENTIAL
2 **part of the overall transaction.**

3 **Q. So there was no requirement --**

4 A. So that's why I ask what do you
5 mean by the transaction. With the overall
6 transaction there were other aspects to it
7 that could -- could affect that answer.

8 **Q. And did the matched book values**
9 **change drastically throughout that week?**

10 MR. HINE: Object to the form.

11 A. They could have given what was
12 going on in the market.

13 MR. AMER: Can you just read back
14 the question.

15 (Record read.)

16 MR. AMER: The question is whether
17 you have knowledge about whether that
18 changed.

19 A. I don't have direct knowledge of
20 it.

21 **Q. Was there any reference in the**
22 **final agreement to any -- to matched book?**

23 MR. HINE: Object to the form.

24 A. Not those words, no.

25 **Q. Conceptually was it?**

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1 A. KELLER - HIGHLY CONFIDENTIAL
2 MR. HINE: Objection.

3 **Q. I mean, you say not those words.**
4 **Were they referred -- other words referred to**
5 **some type of matched book?**

6 A. I had viewed in the initial draft
7 of the APA the long positions and short
8 positions as reflecting the two sides of that
9 matched book.

10 **Q. The 70 billion versus the 69**
11 **billion?**

12 A. Right.

13 **Q. Do you know how that 70 billion**
14 **was calculated?**

15 A. No.

16 **Q. Do you know if there was a list of**
17 **CUSIPs for that -- making up that 70 billion?**

18 A. At the time that 70 billion was
19 that schedule that we referred to earlier.
20 And I don't know of a list of CUSIPs at that
21 time. Because that was, as I'd said, the
22 first day we came to Lehman's offices was my
23 understanding had been already agreed to by
24 the principals.

25 **Q. Was it your understanding that was**

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1 A. KELLER - HIGHLY CONFIDENTIAL
2 an updated valuation of certain Lehman
3 securities?

4 MR. HINE: Object to the form.

5 A. I'm not sure what you mean by
6 updated or how updated but it would have been
7 the value of the -- it was my understanding
8 that that was the value of the assets in the
9 matched book.

10 **Q. That that was -- do you understand**
11 **what the value of the -- those assets were on**
12 **Friday, September 12th?**

13 A. I don't know as of exactly when.

14 **Q. Do you know -- were you aware of**
15 **values placed on the amount of the repo**
16 **collateral that was transferred to Barclays?**

17 MR. HINE: Object to the form.

18 A. The repo collateral being the
19 collateral in the Barclays repo.

20 **Q. Yes.**

21 A. Yeah. I was not directly aware of
22 values. Those values.

23 **Q. Were you indirectly aware?**

24 A. Well, my impression is that it was
25 at least part of if not the values that we

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1 A. KELLER - HIGHLY CONFIDENTIAL
2 THE VIDEOGRAPHER: The time is
3 12:21. We're on the record.

4 BY MR. THOMAS:

5 **Q. The clarification letter involved**
6 **changes to the assets and liabilities being**
7 **conveyed as part of the sale transaction,**
8 **correct?**

9 A. Yes. Changes to the language.

10 **Q. And changes to the assets and**
11 **liabilities also.**

12 A. It could be. It was difficult for
13 me to understand to the -- to what extent the
14 language was just further description of the
15 intent of the original agreement or a change.

16 **Q. Because the intent of the original**
17 **agreement was to sell a business, not to sell**
18 **some particular value of assets or**
19 **liabilities.**

20 MR. HINE: Objection to form.

21 MR. ROTHMAN: Objection to form.

22 A. No. Not necessarily. Because the
23 language used in the definition of purchased
24 assets, again, my sense was I was not
25 surprised to see a clarification letter

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1 A. KELLER - HIGHLY CONFIDENTIAL
2 putting a finer line on what may have been
3 intended in that definition of purchased
4 assets or liabilities. More a description as
5 to what particular assets, broader terms might
6 have covered. In part. If there were actual
7 changes to the agreement that again was
8 something that was between -- discussions
9 between the principals that we weren't a part
10 of.

11 **Q. I'm not sure I understand. The**
12 **clarification letter changed the assets that**
13 **were being conveyed --**

14 A. I'm saying it could have been a
15 combination of two things. It was changes in
16 language that could have changed assets, or
17 added more detailed explanation of the
18 original assets that were intended to be
19 covered as to exactly what that encompassed in
20 further detail. And between the two I'm
21 not -- having not been part -- part of those
22 discussions don't know how much of one or the
23 other it was.

24 **Q. Did you make -- did Simpson make**
25 **any effort to add up the total value of the**

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1 A. KELLER - HIGHLY CONFIDENTIAL
2 assets being conveyed after the revisions made
3 in the clarification letter to the original
4 APA?

5 A. No.

6 **Q. Are you aware of anyone else**
7 **trying to sit down and add up assets and**
8 **liabilities at that point?**

9 A. I am not aware of it but, again,
10 those conversations were in other rooms.

11 **Q. You didn't consider it important**
12 **to --**

13 A. No, what I considered important
14 was making sure that the language that the
15 lawyers put together reflected the
16 understanding between the -- between the
17 principals. And just making sure that people
18 did go back to the principals and have them
19 look at the language, say, is this the deal.

20 **Q. And as you sit here today do you**
21 **think that you did that successfully?**

22 MR. HINE: Object to the form.

23 A. I would hope so.

24 **Q. At any point did you ever hear or**
25 **understand there to be any type of cap or**

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1 A. KELLER - HIGHLY CONFIDENTIAL
2 limit placed on the value of assets being
3 transferred?

4 MR. AMER: I think we have to
5 limit that up to September 30th.

6 THE WITNESS: Yes.

7 MR. AMER: Otherwise we're going
8 to run into the privilege issue.

9 MR. THOMAS: Okay.

10 BY MR. THOMAS:

11 **Q. Other than from your lawyers, or**
12 **lawyers for any of the movants after September**
13 **30th, did you ever hear that there was -- did**
14 **you ever hear or understand that there was**
15 **some type of cap or ceiling placed on the**
16 **assets to be transferred?**

17 A. No. Other than depending on
18 specific types of -- referring to a matched
19 book if that's what you mean by a cap. But a
20 specific dollar amount, no.

21 **Q. Well, putting aside a specific**
22 **dollar amount, did you ever hear that the deal**
23 **that was struck between the parties**
24 **involved -- did you ever hear or understand**
25 **that the deal between the parties involved any**

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1 A. KELLER - HIGHLY CONFIDENTIAL
2 type of agreement that there was a cap on
3 assets such that assets over some dollar
4 figure couldn't be transferred?

5 A. No.

6 Q. Let me ask you to go ahead and
7 look at document what's been previously marked
8 as Exhibit 442.

9 MR. AMER: I assume you've got a
10 specific page.

11 MR. THOMAS: No. Just go ahead
12 and read it.

13 THE WITNESS: I'll tell you when
14 I'm done.

15 Q. And before we dig into this, one
16 of the deposition topics was the 47.4 billion
17 and 45.5 billion mentioned at one point in the
18 257-page hearing transcript by Ms. Fife.

19 Does Simpson have any
20 understanding of how that was calculated or
21 what it comprises?

22 A. No.

23 Q. Does Simpson have any
24 understanding of what the 45.5 figure was
25 calculated or comprised of?

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1 A. KELLER - HIGHLY CONFIDENTIAL

2 MR. AMER: Isn't that what just
3 asked him?

4 MR. THOMAS: Did I ask both?
5 Okay. Fine. I'll withdraw it. I'm
6 covered.

7 Q. Simpson doesn't have any
8 understanding as to how either of those
9 figures, the 47.4 or 45.5 --

10 A. Were calculated.

11 Q. -- were calculated or what they
12 comprise.

13 A. Or what?

14 Q. Or what they comprise.

15 A. That's right.

16 Q. And you don't recall hearing any
17 of those numbers mentioned over the weekend at
18 Weil when the agreement was being finalized.

19 A. No, I do not.

20 Q. Okay. If you would turn to page
21 47, please. This is the hearing transcript,
22 September 19th sale hearing. The third
23 paragraph there says, "Barclays is still
24 agreeing to pay the cure amounts on any leases
25 that it assumes or that we assume and assign

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1 A. KELLER - HIGHLY CONFIDENTIAL
2 to it."

3 Do you see that?

4 A. Yes.

5 Q. Is that consistent with your
6 understanding of the contract term that we
7 looked at earlier with respect to Barclays
8 assuming certain cure and other payments on
9 contracts that it elects to keep?

10 A. Generally, yes. Although, I
11 focused less on the real estate piece of it
12 because there was a separate Weil team that
13 was working on that. So to the extent the
14 leases were involved, I know there were a lot
15 of negotiations and discussions about that
16 which I did not focus on since there were
17 experts in those areas who were doing that.

18 Q. Okay. But the notion that
19 Barclays would only incur liability on leases
20 or other contracts that it assumes was
21 consistent with your understanding of the
22 actual sale documents, correct?

23 MR. HINE: Object to the form.

24 A. Assumes or that it would have --
25 assumed either as part of this cure amount

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1 A. KELLER - HIGHLY CONFIDENTIAL
2 process or assumed under the contract.

3 Q. And you recall there was -- strike
4 that.

5 Let me ask you to turn to page
6 100, please.

7 A. (Witness complies.)

8 Q. It says "Barclays is also assuming
9 the cure amounts relating to contracts and
10 leases that will be assumed pursuant to the
11 Asset Purchase Agreement and that has a
12 potential exposure, Your Honor, of \$1.5
13 million that he would testify to."

14 When it's referenced as potential
15 exposure do you understand that to be an
16 estimate of a potential maximum amount of
17 exposure if Barclays assumed all the
18 contracts?

19 MR. HINE: Object to the form.

20 MR. AMER: Yeah, I'm going to
21 object. Can we just establish if he was
22 aware of this at the time and then you
23 can ask him.

24 MR. THOMAS: No, I assume --

25 MR. HINE: Or if he was at the

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